

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

No. 609.

CONTINENTAL INSURANCE COMPANY AND FIDELITY-
PHENIX FIRE INSURANCE COMPANY OF NEW YORK,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, READING COMPANY,
THE PHILADELPHIA AND READING COAL & IRON
COMPANY, ET AL.

No. 610.

SEWARD PROSSER, MORTIMER N. BUCKNER, AND JOHN
H. MASON, AS A COMMITTEE REPRESENTING HOLD-
ERS OF COMMON STOCK OF THE READING COMPANY,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, READING COMPANY,
PHILADELPHIA AND READING COAL & IRON COM-
PANY, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED NOVEMBER 2, 1901.

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(28,565)

IN THE
SUPREME COURT OF THE UNITED STATES

No. . OCTOBER TERM, 1921.

CONTINENTAL INSURANCE COMPANY
AND
FIDELITY-PHENIX FIRE INSURANCE COMPANY
OF NEW YORK,

APPELLANTS,

VS.

READING COMPANY, ET AL.,
APPELLEES.

SEWARD PROSSER, MORTIMER N. BUCKNER
AND JOHN H. MASON AS A COMMITTEE, ETC.,
APPELLANTS,

VS.

READING COMPANY, ET AL.,
APPELLEES.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES, EASTERN
DISTRICT OF PENNSYLVANIA.

INDEX.

	PAGE
Docket entries	v
Opinion of Supreme Court of United States in United States v. Reading Company <i>et al.</i> (253 U. S. 26, 40-65).....	1
Mandate of Supreme Court of United States.....	27
Decree on Mandate.....	31
Plan of Reading Company.....	40

II

	PAGE
Counter Proposal by the United States to Paragraph Eight of Plan of Reading Company.....	45
Order of Court filed February 14, 1921.....	46
Supplemental Bill by the United States to make Central Union Trust Company of New York a party to the Cause.....	48
Petition of Continental Insurance Company and Fidelity- Phenix Fire Insurance Company of New York for leave to intervene.....	51
Petition of Seward Prosser, Mortimer N. Buckner and John H. Mason as a Committee for Leave to Intervene on be- half of certain common stockholders, and suggesting modification of plan of Dissolution.....	96
Amended and Supplemental Petition of Seward Prosser, Mortimer N. Buckner and John H. Mason as a Committee representing holders of common stock for modification of Plan of Dissolution.....	101
Petition of Frances T. Ingraham for Information from the Reading Company as to the Value of her Interest in the Reading Property.....	120
Petition of Adrian Iselin, Robert B. Dodson, Edwin G. Merrill and William A. Law, as a Committee representing certain holders of First and Second Preferred Stock of Reading Company, for Leave to Intervene.....	131
Amended Petition of the New York Central Railroad Com- pany for Leave to Intervene.....	140
Petition of the Baltimore and Ohio Railroad Company for Leave to Intervene.....	142
Petition of William B. Kurtz and Madge Fulton Kurtz for Leave to Intervene.....	143
Petition of the Penn Mutual Life Insurance Company for Leave to Intervene.....	144
Petition of the Girard Avenue Title and Trust Company to Intervene	145
Petition of the Pennsylvania Company for Insurances on Lives and Granting Annuities, <i>et al.</i> , for Leave to Inter- vene	146
Petition and Answer of Joseph E. Widener.....	148
Answer of Central Union Trust Company of New York.....	150
Answer to Intervening Petitions, and Cross-Petition of De- fendant Reading Company.....	153
Order Granting Leave to Intervene and Making Central Union Trust Company Party Defendant.....	203

III

	PAGE
Order Setting Down Questions for Argument.....	205
Appearances	207
Filing of Certificates.....	208
Modifications of Plan.....	210
Stipulation	212
(1) Plan of Reorganization of the Philadelphia and Reading Railroad Company and Philadelphia and Reading Coal and Iron Company, dated Decem- ber 14, 1895	213
(2) Application to List on New York Stock Exchange.	228
(3) Opinion of Counsel.....	246
(4) Opinion of Attorney General of Pennsylvania.....	252
(5) Consolidated Statement of Earnings for Phila- delphia & Reading Railroad Company and the Philadelphia & Reading Coal & Iron Company for the Period Prior to the Reorganization.....	259
(6) Statement of Surpluses for the Years 1898 to 1920, Inclusive	259
(7) Extracts from Reports of Philadelphia and Reading Railroad Company:	
(a) From Annual Report for 1887, pp. 23 to 25	260
(b) From Annual Report for 1891, p. 15.....	262
(c) From Annual Report for 1893, p. 11.....	263
(d) From Annual Report for 1893, pp. 77 and 78	263
(e) From Annual Report for 1894, p. 9.....	264
(f) From Annual Report for 1895, p. 7.....	265
(g) From Annual Report for 1895, p. 11....	265
(7) Printed Report of the Committee appointed by the Stockholders to Investigate the Philadelphia and Reading Railroad Company, dated January 12, 1895, pp. 37 to 43.....	265
(8) List of Fifty largest Stockholders of Reading Com- pany at close of business, March 16, 1914.....	271
Plan as Modified.....	274
Opinion filed May 21, 1921.....	278
Decree filed June 6, 1921.....	287
Order Appointing Trustees filed June 11, 1921.....	313
Petition of Continental Insurance Company and Fidelity- Phenix Fire Insurance Company of New York for Appeal.	314

IV

	PAGE
Assignments of Error.....	317
Order Allowing Appeal.....	320
Supersedeas Bond and Bond on Appeal.....	323
Citation	327
Order Enlarging Time to Docket Case and File Transcript...	331
Further Order Enlarging Time to Docket Case and File Transcript	332
Petition of Seward Prosser, <i>et al.</i> , for Appeal.....	332
Assignment of Errors.....	333
Order Allowing Appeal.....	338
Receipt of Security for Costs.....	338
Citation	339
Order Enlarging Time to Docket Case and to File Transcript.	342
Further Order Enlarging Time to Docket Case and File Transcript	343
Stipulation of Counsel <i>re</i> Record.....	343
Copy of Clerk's Certificate.....	347

**Docket entries in the United States District Court for the Eastern
District of Pennsylvania.**

No. 10-95. September sessions, 1913. In Equity. No. 1095.

THE UNITED STATES OF AMERICA

VS.

**READING COMPANY, PHILADELPHIA &
READING RAILWAY COMPANY, THE
PHILADELPHIA & READING COAL &
IRON COMPANY, THE LEHIGH &
WILKES-BARRE COAL COMPANY, THE
LEHIGH COAL & NAVIGATION COM-
PANY, corporations of Pennsylvania;
THE CENTRAL RAILROAD COMPANY OF
NEW JERSEY, a corporation of New
Jersey; WILMINGTON & NORTHERN
RAILROAD COMPANY, a corporation of
Pennsylvania and Delaware; LEHIGH
& HUDSON RIVER RAILWAY COMPANY,
a corporation of New York and New
Jersey; LEHIGH & NEW ENGLAND
RAILROAD COMPANY, a corporation of
Pennsylvania and New Jersey;
GEORGE F. BAER, GEORGE F. BAKER,
EDWARD T. STOTESBURY, HENRY C.
FRICK, PETER A. B. WIDENER, HENRY
A. DU PONT, DANIEL WILLARD, HENRY
P. McKEAN, and SAMUEL DICKSON.**

1913.

Sept. 2. Petition filed.

**" 3. Petition for and order directing service of
subpœnas on nonresident defendants filed.**

***Præcipe* for subpœna filed.**

**Original subpœna for Eastern District of Penn-
sylvania issued.**

1913.

- Sept. 3. Duplicate subpoena for Southern District of New York issued.

Duplicate subpoena for Western District of Pennsylvania issued.

- " 4. Duplicate subpoena for District of Maryland issued.

Duplicate subpoena for District of Delaware issued.

- " 10. Duplicate subpoena for Southern District of New York returned "Served on Central Railroad Company of New Jersey, Lehigh & Hudson River Railway Company, and George F. Baker, together with copy of original petition and order," and filed.

Duplicate subpoena to District of Delaware returned "Served on Henry A. du Pont together with copy of petition and order" and filed.

- " 11. Duplicate subpoena to Western District of Pennsylvania returned "Served on Henry C. Frick with copies of petition and order" and filed.

Duplicate subpoena of District of Maryland returned "Served with copy of petition and order on Daniel Willard" and filed.

- " 19. Order for the appearance of William Jay Turner, Esquire, for Lehigh & New England Railroad Company, one of defendants, filed.

- " 24. Order for the appearance of Charles Heebner, Esquire, for Reading Company, Philadelphia & Reading Railway Company, Philadelphia & Reading Coal & Iron Company, Wilmington & Northern Railroad Company, George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. du Pont, Daniel Willard, Henry P. McKean, and Samuel Dickson filed.

- 1913.
- Sept. 29. Original subpoena returned "Served on Sept. 4, 1913, on Reading Company, Philadelphia & Reading Rwy. Company, Lehigh & Wilkes-Barre Coal Company, Lehigh Coal & Navigation Company, Wilmington & Northern Railroad Company, and Lehigh & New England Railroad Company, and Henry P. McKean (answer due Sept. 24, 1913), and on Peter A. B. Widener on Sept. 8 (answer due Sept. 28, 1912), and on Sept. 11, 1913, on George F. Baer and Samuel Dickson and Edward T. Stotesbury (answer due Oct. 1, 1913)," and filed.
- Oct. 18. Answer of Lehigh Coal & Navigation Company filed.
- " 21. Answer of Lehigh & New England Railroad Company filed.
- " 22. Answer of Wilmington & Northern Railroad Company filed.
- Answer of Reading Company filed.
- Answer of Philadelphia & Reading Coal and Iron Company filed.
- Answer of Philadelphia & Reading Railway Company filed.
- " 25. Order for the appearance of Robert W. deForest, Esq., and Jackson E. Reynolds, Esq., for Central Railroad Company of New Jersey filed.
- Order for the appearance of Robert W. deForest, Esq., and Jackson E. Reynolds, Esq., for Lehigh & Wilkesbarre Coal Company filed.
- " 29. Joint and separate answer of George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. du Pont, Daniel Willard, Henry P. McKean, and Samuel Dickson filed.

VIII

1913.

Nov. 1. Answer of Lehigh & Hudson River Railway Company filed.

" 13. Answer of Lehigh & Wilkesbarre Coal Company filed.

Answer of Central Railroad Company of New Jersey filed.

1914.

Jany. 27. Order appointing examiner and fixing times for testimony filed.

Mch. 26. Expediting certificate of attorney general filed.

May 23. Typewritten testimony (6 volumes) filed.

Petitioner's printed evidence and exhibits Vol. 1, filed.

Defendant's printed copy evidence & exhibits filed.

Petitioner's printed copy evidence and exhibits in rebuttal filed.

Book of maps produced before examiner filed.

" 28. Petitioner's Exhibit No. 1 (map) filed.

June 3. Petitioner's exhibit 19th annual report of Board of Directors of Lehigh & New England Railroad Company, 93rd annual report of Lehigh Coal & Navigation Company; report of June 30, 1913, of Central Railroad Company of New Jersey; report of June 30, 1913, of Lehigh & Wilkesbarre Coal Company; 31st annual report of Lehigh & Hudson River Railway Company; plan and agreement for the reorganization of Philadelphia & Reading Railroad Company, and Philadelphia & Reading Coal & Iron Company of Dec. 14, 1895 filed.

" 3. Argued *sur* pleadings and proofs.

" 4. Argued *sur* pleadings and proofs.

IX

1914.

- June 22. Petitioner's Exhibit No. 4, plan and agreement for reorganization of Philadelphia & R. Co., and Phila. & Reading Coal & Iron Co., dated December 14, 1895, filed.

Reply brief of petitioner filed.

Supplemental memorandum of Reading Company, Philadelphia & Reading Rwy. Co., and Phila. & Reading Coal & Iron Company filed.

1915.

- July 3. Opinion, McPherson, J., granting decree for defendants, filed.

Sept. 30. Argued *re* settlement of decree.

Oct. 28. Final decree filed.

- Nov. 17. Assignments of error on behalf of the United States filed.

Petition of the United States for appeal filed.

Order allowing petition of United States for appeal filed.

Petition as to transcript of record *sur* appeal filed.

Order directing reproduction of testimony in transcript of record *sur* appeal filed.

- " 22. Stipulation for filing *nunc pro tunc* of copy of annual report of Reading Company for year ended June 30, 1913, filed.

Sixteenth annual report of Reading Company filed *nunc pro tunc* in accordance with stipulation filed November 22, 1915.

Stipulation for transcript of record *sur* appeal filed.

Citation returned "Service accepted" and filed.

1920.

- Aug. 13. Mandate from Supreme Court of United States affirming in part and reversing in part decree of this court and remanding cause to this court with direction to enter decree received and filed.
- Oct. 8. Interlocutory decree filed.
Decree authorizing Reading Company to secure proxies for certain stock filed.
- Dec. 31. Motion for extension of time for filing plan of dissolution filed.
Decree fixing time for hearing *sur* motion for extension of time for filing plan of dissolution filed.

1921.

- Jan. 5. Petition of William B. Kurtz and M. F. Kurtz for leave to intervene filed.
- Feb. 14. Proposed plan of Reading Company, Philadelphia & Reading Rwy. Company and Philadelphia & Reading Coal & Iron Company, filed.
Counter proposal of plaintiff to paragraph of proposed plan of Philadelphia & Reading Railway Company and Philadelphia & Reading Coal & Iron Company, filed.
Memorandum of plaintiff *in re* proposed plan of dissolution filed.
Proposed plan for disposal by Central Railroad Company of N. J. of stock owned or controlled by Lehigh & Wilkes Barre Coal Company, filed.
Decree modifying injunction heretofore issued so as to permit Central Railroad Company of New Jersey to receive certain dividends upon the stock of Lehigh & Wilkes Barre Coal Company, filed.
Decree as to disposition of copies of plan, etc., and fixing time for further hearing *in re* plan for dissolution filed.

1921.

Mch. 1. Hearing *sur* plan of Reading Company and proposed intervention.

" 19. Affidavit as to service of copy of Reading Plan, etc., filed.

Apr. 7. Certificate of Victor B. Woolley, U. S. Circuit Judge, as to his disqualification to sit in this case filed.

Designation of J. Whitaker Thompson, U. S. District Judge, to sit at hearings in this case filed.

" 12. Notice of motion for leave to file supplemental bill of complaint filed, *nunc pro tunc* as of March 1, 1921.

Motion for leave to file supplemental bill of complaint filed *nunc pro tunc* as of March 1, 1921.

Draft of Supplemental bill of complaint filed *nunc pro tunc* as of March 1, 1921.

Petition of Reading Company for reasonable time within which to file answers to petitions for leave to intervene filed, *nunc pro tunc* as of March 12, 1921.

Petition of Frances T. Ingraham for information from Reading Company as to the value of her interest in the Reading property filed *nunc pro tunc* as of March 15, 1921.

Petition of Baltimore & Ohio Railroad Company for leave to intervene filed *nunc pro tunc* as of March 15, 1921.

Petition of Girard Ave. Title & Trust Company to intervene filed *nunc pro tunc* as of March 15, 1921.

Petition of Adrian Iselin *et al.* for leave to intervene filed *nunc pro tunc* as of March 15, 1921.

Petition of Penn Mutual Life Insurance Company for leave to intervene filed *nunc pro tunc* as of March 15, 1921.

1921.

- Apr. 12. Petition of the New York Central Railroad Company for leave to intervene filed *nunc pro tunc* as of March 15, 1921.
- Amended petition of the New York Central Railroad Company for leave to intervene filed *nunc pro tunc* as of March 15, 1921.
- Petition of Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York for leave to intervene filed *nunc pro tunc* as of March 15, 1921.
- Petition of Frances T. Ingraham *et al.* for leave to intervene filed *nunc pro tunc* as of March 15, 1921.
- Printed copy of petition of Frances T. Ingraham for information from the Reading Company as to the value of her interest in the Reading property filed *nunc pro tunc* as of March 15, 1921.
- Petition of the Pennsylvania Company for Insurances on Lives & Granting Annuities *et al.* for leave to intervene filed *nunc pro tunc* as of March 15, 1921.
- Petition of Seward Prosser *et al.*, Committee for Common stockholders for leave to intervene filed *nunc pro tunc* as of March 15, 1921.
- Petition of Joseph E. Widener for leave to intervene and to file a separate answer to certain intervening petitions and cross-petitions filed *nunc pro tunc* as of March 15, 1921.
- Amended and supplemental petition for modification of plan of dissolution of Seward Prosser, *et al.* filed *nunc pro tunc* as of March 15, 1921.
- Answer of Reading Company to intervening petitions and cross petitions to said petitions filed *nunc pro tunc* as of April 5, 1921.

- 1921.
- Apr. 12. Decree granting leave to foregoing petitioners to intervene and directing that Central Union Trust Co. of New York, Trustee, be made party defendant, filed.
- Answer of Central Union Trust Company of New York, Trustee, filed.
- Decree fixing time of hearing argument on certain questions, etc., filed.
- " 15. Appearance of George S. Ingraham, Esq., for Frances T. Ingraham Robert S. Ingraham, Mabel B. Ingraham, George S. Ingraham and Marcus L. Taft, filed.
- " 16. Appearance of Alexander S. Lyman for New York Central Railroad Company filed.
- Certificate of ownership of certain stock by Girard Ave. Title & Trust Company filed.
- " 18. Certificate as to stock ownership of Wm. B. Kurtz filed.
- Appearance of Thomas Raeburn White for Wm. B. Kurtz filed.
- Appearance of T. R. White for Madge Fulton Kurtz filed.
- Appearance of M. J. Ryan for the Girard Ave. Title & Trust Co. filed.
- Appearance of George Wharton Pepper, Esq., for Penn Mutual Life Ins. Co. filed.
- Certificate as to stock ownership of Madge Fulton Kurtz filed.
- " 20. Certificate as to stock ownership of Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York and of their appearance filed.
- " 22. Notice of intervention as parties defendant of Seward Prosser, *et al.*, Committee for Common stockholders and their appearance as such intervening defendant parties defendant filed.

1921.

- Apr. 22. Certified copies of proxies of certain common stockholders filed.
- “ 26. Appearance of Ellis Ames Ballard for Joseph E. Widener filed.
Appearance of Larkin, Rathbone & Perry for Central Union Trust Company of New York filed.
- “ 27. Certificate as to stock ownership of Estate of P. A. B. Widener, and Joseph E. Widener filed.
Appearance of H. B. Gill for Baltimore & Ohio Railroad Company, filed.
- “ 28. Memorandum on behalf of Central Union Trust Company of New York, Trustee under General Mortgage of Reading Company, *et al.*, filed.
- May 2. Hearing *sur* settlement of decree (Modification of plan to be filed in ten days).
- “ 12. Modification of Reading plan filed.
- “ 21. Opinion, Buffington, *J.*, directing decree to be submitted to the Court making effective Mandate from U. S. Supreme Court in accordance with modified plan agreed to by Reading Company and Attorney General of United States filed.
- June 6. Final Decree filed.
- “ 11. Decree appointing Trustees filed.
- “ 16. Hearing *in re* petition of Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York for appeal.
Petition of Continental Insurance Company and Fidelity-Phenix Fire Insurance Company for appeal filed.
Assignments of error filed.
Decree granting petition for appeal filed.

- 1921.
- July 20. Bond *sur* appeal in \$750,000 with United States Fidelity & Guaranty Company, filed. Order of Court approving bond *sur* appeal filed.
- " 21. Citation allowed and issued.
- " 22. Appearance of Wm. Clarke Mason, Esq., and R. C. Leffingwell, Esq., for Reading Company, filed.
- Aug. 3. Petition for appeal by Seward Prosser, *et al.*, Committee for Common stockholders, filed. Decree granting prayer of petition filed. Assignments of Error filed.
- " 5. Sum of \$2,500 deposited in Registry of the Court in lieu of bond *sur* appeal by Seward Prosser, *et al.*, Committee for Common stockholders. Citation allowed and issued.
- " 8. Citation by Continental Insurance Company, *et al.*, returned, service accepted and filed.
- " 26. Citation by Seward Prosser, *et al.*, returned—service accepted—and filed.
-



UNITED STATES *v.* READING COMPANY ET AL.
READING COMPANY ET AL. *v.* UNITED STATES.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Nos. 3, 4. Argued October 10, 11, 1916; restored to docket
for reargument May 21, 1917; reargued November
20, 21, 1917; restored to docket for reargument
June 10, 1918; reargued October 7, 1919.—Decided
April 26, 1920.

THE SOLICITOR GENERAL, with whom THE ATTORNEY
GENERAL and MR. A. F. MYERS were on the brief,
for the United States.¹

MR. JACKSON E. REYNOLDS, with whom MR. CHARLES
HEEBNER and MR. JOHN G. JOHNSON were on the
brief, for Reading Company, Philadelphia &
Reading Railway Company, and the Philadelphia
& Reading Coal & Iron Company.²

MR. ROBERT W. DE FOREST, with whom MR. CHARLES
E. MILLER was on the brief, for Central Railroad
Company of New Jersey.

MR. HENRY S. DRINKER, JR., and MR. ABRAHAM M.
BEITLER filed a brief on behalf of the Lehigh
Coal & Navigation Company.

MR. JOHN J. BEATTIE filed a brief on behalf of the
Lehigh & Hudson River Railway Company.

MR. WM. JAY TURNER filed a brief on behalf of the
Lehigh & New England Railroad Company.

¹ At the first and second hearings the case was argued by *Mr. Solicitor General Davis* and *Mr. Assistant to the Attorney General Todd*. *Mr. Attorney General Gregory* and *Mr. Thurlow M. Gordon*, Special Assistant to the Attorney General, also were on the brief.

² At the first hearing *Mr. John G. Johnson* argued the case for the Philadelphia & Reading Coal & Iron Company.

MR. JUSTICE CLARKE delivered the opinion of the court.

These are appeals from a decree entered in a suit instituted by the Government to dissolve the intercorporate relations existing between the corporation defendants, for the alleged reason that through such relations they constitute a combination in restraint of interstate commerce in anthracite coal, and an attempt to monopolize or a monopolization of such trade and commerce in violation of the first and second sections of the Anti-Trust Act of Congress, of July 2, 1890, c. 647, 26 Stat. 209; and also for the alleged reason that the defendants, Philadelphia & Reading Railway Company and Central Railroad Company of New Jersey are violating the commodities clause of the Act of Congress of June 29, 1906, c. 3591, 34 Stat. 585, by transporting over their lines of railroad, in interstate commerce, coal mined or purchased by coal companies with which they are associated by stock ownership.

It will contribute to brevity and clearness to designate the defendant corporations as follows: Reading Company, as the Holding Company; Philadelphia & Reading Railway Company, as Reading Railway Company; Philadelphia & Reading Coal & Iron Company, as Reading Coal Company; Central Railroad Company of New Jersey, as Central Railroad Company; Lehigh & Wilkes-Barre Coal Company, as Wilkes-Barre Company; Lehigh Coal & Navigation Company, as Navigation Company.

Practically all of the anthracite coal in this country is found in northeastern Pennsylvania, in three limited and substantially parallel deposits, located in valleys which are separated by mountainous country. For trade purposes these coal areas are designated: the most northerly, as the Wyoming field, estimated to contain about 176 square miles of coal; the next southerly, as the Middle or Lehigh field, estimated to contain about 45 square miles, and the most southerly, as the Schuylkill field, estimated to contain about 263 square miles of coal.

The annual production of the mines in these three fields in 1896 was about 43,640,000 tons and in 1913 it slightly exceeded 71,000,000 tons. The chief marketing centers for this great tonnage of coal are New York, distant by rail from the fields about 140 miles, and Philadelphia, distant about 90 miles. From these cities it is widely distributed by rail and water throughout New York and New England, and to some extent, through the South.

Such a large tonnage was naturally attractive to railroad carriers, with the result that the Wyoming field has six outlets by rail to New York Harbor, viz: The Central Railroad of New Jersey and five others, known as initial anthracite carriers. The Lehigh field has three such rail outlets, but the largest, the Schuylkill field, has only two direct rail connections with Philadelphia and New York, viz: The Reading and the Pennsylvania Railroads. Outlets by canal to Philadelphia and tidewater, at one time important, may here be neglected.

This description of the subject-matter and of its relation to the interstate transportation system of the country will suffice for the purposes of this opinion. It may be found in much greater detail in the cases cited in the margin.¹

The essential claims of the Government in the case have become narrowed to these, viz:

FIRST: That the ownership by the Holding Company of controlling interests in the shares of the capital stocks of the Reading *Railway* Company, of the Reading Coal Company and of the Central Railroad Company, constitutes a combination in restraint of interstate trade and commerce and an attempt to monopolize and a monopolization of a part of the same in violation of the Anti-Trust Act of July 2, 1890.

¹ *United States v. Reading Co.*, 183 Fed. Rep. 427; *United States v. Reading Co.*, 226 Fed. Rep. 229; *United States v. Delaware & Hudson Co.*, 213 U. S. 366; *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 257; *United States v. Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516; *United States v. Reading Co.*, 226 U. S. 324.

SECOND: That the Holding Company in itself constitutes a like violation of the act.

THIRD: That certain covenants and agreements between the Central Railroad Company and the Navigation Company contained in a lease, by the latter to the former, of the Lehigh & Susquehanna Railroad, constitute a like violation of the act.

FOURTH: That the transportation in interstate commerce by the Reading Railway Company and by the Central Railroad Company, of coal mined or purchased by the coal companies affiliated with each of them constitutes a violation of the commodities clause of the Act to Regulate Commerce.

Pursuant to the provisions of the Act of June 25, 1910, c, 428, 36 Stat. 854, the case was heard by three Circuit Judges of the Third Circuit, who while holding against the contention of the Government on many of the prayers for relief in the bill, some generally and some without prejudice, also held that the Reading Coal Company and the Wilkes-Barre Coal Company were naturally competitive producers and sellers of anthracite coal and that their union through the Holding Company and the Central Company constituted a combination in restraint of trade within the Anti-Trust Act, and for this reason the Central Company was ordered to dispose of all the stock, bonds and other securities of the Wilkes-Barre Coal Company owned by it and was enjoined from requiring the Coal Company to ship its coal over the lines of the Central Company.

The court also held that clauses in mining leases by the Reading Coal Company and by the Wilkes-Barre Coal Company, and their subsidiaries, requiring the lessees to ship all coal produced, over roads, named or to be designated, were unlawful and void.

The case has been appealed by both parties and is before us for review on all of the issues as we have thus stated them.

Reference to the history of the properties now controlled by the Holding Company will be of value for the assistance it will be in determining the intent and purpose with which the combinations here assailed were formed. *Standard Oil Co. v. United States*, 221 U. S. 1, 46, 76.

The Philadelphia & Reading Railroad Company was chartered by special act of the Pennsylvania General Assembly in 1833, and it conducted the business of a railroad carrier prosperously for about thirty years, when, as its annual reports show, it embarked upon the policy of attempting to control the anthracite tonnage of the Schuylkill field by acquiring extensive ownership of coal lands. Thus, the report of the Company for 1871 contains the following:

"Up to this time about 70,000 acres of the best anthracite coal lands in Pennsylvania have been acquired and will be held by an auxiliary company, known as the Philadelphia and Reading Coal and Iron Company, of which the Philadelphia and Reading Railroad Company is the only stockholder. The result of this action has been to secure—and attach to the company's railroad—a body of coal land capable of supplying all the coal-tonnage that can possibly be transported over the road for centuries."

And this is from the report for 1880:

"The transportation of coal has always been a source of great profit to the railroad company, and the only doubt in the past about the permanency of the earning power of the company as a transporter was due to the fear that rival companies would tap the Schuylkill region, and divert the coal tonnage to their own lines. This danger was happily averted by the purchase of the coal lands."

And this from the report of 1881 :

"The coal estates of the Philadelphia and Reading Company . . . consist of 91,149 acres (142 square miles) of coal lands, which is sixty per cent of all the anthracite lands in the Schuylkill district, and thirty per cent of all in Pennsylvania."

This area of coal lands had increased by 1891 to 102,573 acres, of which the report said :

"The coal lands comprise in extent about 33 per cent of the entire anthracite coal fields of the State, and taking into account the aggregate thickness of the veins on the company's lands, and the greater proportionate depletion of the estates in the other regions which has been going on for many years, it must be conceded that we have at least 50 per cent of the entire deposit remaining unmined."

As if in further pursuit of this now settled purpose, in the following year, 1892, the Reading Railroad Company leased the Lehigh Valley Railroad and the Central Railroad of New Jersey for 999 years. These were both anthracite carriers, competing with the Reading and each had an important coal mining subsidiary company. But the lease by the Central Railroad Company was assailed in the New Jersey courts and all operations under it were enjoined, with the result that both leases were abandoned.

It is obvious that these reports show an avowed and consistently pursued purpose (not then prohibited by statute) to secure by purchase a dominating control over the coal of the Schuylkill field and over the transportation of it to market.

In the large financial operations incident to the expansion policy thus described, bonds were issued, secured by a mortgage on all of the property of the Reading Railroad Company and of the Reading Coal Company. In 1893 there was default in the payment of interest on these bonds and receivers were appointed who operated both

properties until 1896 when they were sold to representatives of the creditors and stockholders of the two companies, and under a scheme of reorganization, the validity of which is assailed in this suit, both properties were transferred to three corporations in the manner now to be described:

1st. To the Reading *Railway* Company, a corporation newly organized under the laws of Pennsylvania, were allotted about 1,000 miles of the railroad (but none of the equipment) which had been owned or leased by the former Reading *Railroad* Company. The capital stock of this company was fixed at \$20,000,000 and it issued \$20,000,000 of bonds, all of which were given to the Holding Company. The property thus transferred was valued, in the representations made at the time to the New York Stock Exchange, at \$90,000,000. In 1896 this railroad carried in excess of 9,000,000 tons of anthracite,—more than one-fifth of the then total production of the country. But by the plan of reorganization adopted it was disabled from performing its functions as a carrier, except with the aid of the Holding Company, for all of the equipment, engines, cars and ships, owned by the former Railroad Company, and its tidewater terminals at Philadelphia and on New York Harbor, were allotted to the Holding Company.

2nd. By the decree of sale the Reading Coal and Iron Company was released from its former obligations and to it thus freed the principal part of the property (coal and other), owned by it before the sale, was allotted and re-transferred upon condition, that it would deliver all of its capital stock to the Holding Company, would become co-obligor with that company on bonds to be issued, and would join with it in executing a mortgage for \$135,000,000 on all of its property to secure such bonds. This Company thus came into possession of 102,573 acres

of anthracite lands, owned and leased,—almost two-thirds of the entire acreage of the Schuylkill coal field,—stocks and bonds in other coal companies, coal in storage and other property, all of the estimated value of \$95,000,000.

3rd. To serve the purposes of the intended Holding Company, a charter granted in 1871 by special act of the General Assembly of Pennsylvania, but unused for twenty years, was utilized. This charter was of the class denominated “omnibus” by the Supreme Court of Pennsylvania, and in terms it authorized the company to engage in, or control, almost any business other than that of a bank of issue,—this broad charter was the occasion for making use of the company in this enterprise. The corporate name was changed to “Reading Company,” its capital stock was increased from \$100,000 to \$140,000,000, and the purchasers at the receivers’ sale allotted and transferred to it railroad equipment, real estate, colliers and barges, formerly owned by the Reading *Railroad* Company, together with stocks which gave it control of more than thirty short line railroads, aggregating 275 miles of track, and other property of large value, in addition to all of the bonds and stock of the new Reading *Railway* Company and all of the stock of the Reading Coal Company.

The result of this intercorporate transfer of the property, owned before the reorganization by the Reading *Railroad* Company and the Reading Coal and Iron Company, was that the Holding Company without any outlay—solely because the creditors and stockholders of the former Reading *Railroad* Company and of the Reading Coal Company desired to establish the proposed scheme for control of the properties formerly owned by the two companies—became the owner of the title to railway equipment, real estate, colliers and barges of an estimated value of \$34,400,000; plus all of the capital

stock and bonds of the New Railway Company, \$40,000,000; plus all of the capital stock of the Coal Company, \$8,000,000, and a contract by that company to mortgage, for the use of the Holding Company, its entire property; plus other stocks, bonds and mortgages owned by the former Railroad Company of the estimated value of over \$38,000,000,—making a total value, as represented at the time to the New York Stock Exchange, of \$193,613,000.

Thus, this scheme of reorganization, adopted and executed six years after the enactment of the Anti-Trust Act, combined and delivered into the complete control of the board of directors of the Holding Company all of the property of much the largest single coal company operating in the Schuylkill anthracite field, and almost one thousand miles of railway over which its coal must find its access to interstate markets. This board of directors, obviously, thus acquired power: to increase or decrease the output of coal from very extensive mines, the supply of it in the market, and the cost of it to the consumer; to increase or lower the charge for transporting such coal to market; and to regulate car supply and other shipping conveniences, and thereby to help or hinder the operations of independent miners and shippers of coal. This constituted a combination to unduly restrain interstate commerce within the meaning of the act. *United States v. Union Pacific R. R. Co.*, 226 U. S. 61.

Obviously, also, it made the Coal Company and the Railway Company mere agents or instrumentalities of the Holding Company—the mining and transportation departments of its business—for producing, purchasing, and selling coal and for transporting it to market. The Reading Railway Company and the Reading Coal Company each had thereafter but one stockholder,—the Holding Company—and their earnings were to be distributed not in proportion to the shares of their capital stocks, aggregating \$28,000,000, but were to go to the creditors

and shareholders of the Holding Company, with its mortgage debt of \$135,000,000 and its capital stock of \$140,000,000. The Holding Company thus served to pool the property, the activities and the profits of the three companies. *Northern Securities Co. v. United States*, 193 U. S. 197, 327, 362.

It will be profitable to consider next what use was made of the great power thus gathered into the one Holding Company.

In 1898 this Holding Company entered into a combination with five other anthracite carrying railroad companies to prevent the then contemplated construction of an additional line of railway from the Wyoming field to tide-water, which independent miners and shippers of coal were promoting for the purpose of securing better rates on their coal to the seaboard. In a mere holding company, the Temple Iron Company, all six carriers combined, as stockholders for the purpose of providing \$5,000,000 with which the properties of the chief independent operators, Simpson and Watkins, were purchased and thereby the new railroad project was defeated. The president of the Holding Company was active in the enterprise and that company, although only one of six, became responsible for thirty per cent. of the required financing. In *United States v. Reading Co.*, 226 U. S. 324, 351, this court characterized what was done by this combination, under the leadership of the Holding Company, in these terms:

"The New York, Wyoming & Western Railroad Company was successfully strangled, and the monopoly of transportation collectively held by the six defendant carrier companies was maintained."

And, again, at p. 355:

"We are in entire accord with the view of the court below in holding that the transaction involved a concerted scheme and combination for the purpose of restraining commerce among the States in plain violation of the Act of Congress of July 2, 1890."

About the year 1900 the Holding Company and many other initial anthracite carriers and their controlled coal companies, pursuant to an agreement with each other, made separate agreements with nearly all of the independent producers of coal along their lines, to purchase at the mines "all the anthracite coal thereafter mined from any of their mines now opened or operated or which might thereafter be opened and operated," and to pay therefor 65% of the average price of coal prevailing at tidewater points at or near New York, computed from month to month. In the case above cited, this court discussed these contracts and declared: that they were made for the purpose of eliminating the competition of independent operators from the markets and thus removing "a menace to the monopoly of transportation to tidewater which the defendants collectively possessed"; that before these contracts, there existed not only the power to compete but actual competition between the coal of the independents and that produced by the buying defendants, but that after the contracts were made "such competition was impracticable"; that the case fell well within not only the *Standard Oil and Tobacco Cases*, 221 U. S. 1, 106, but was of such an unreasonable character as to be "within the authority of a long line of cases decided by this court;" and finally that the defendants had combined, by and through the instrumentality of the 65% contracts with the purpose and design of unlawfully controlling the sale of the independent output of coal at tidewater.

Thus, this court held that once within two years and again within four years after it was organized, this Holding Company used the great power which we have seen was centered in its board of directors, by adroit division of property and of corporate agency, for the purpose of violating, in a flagrant manner, the Anti-Trust Act of 1890.

Almost immediately after the two attempts to monopolize the trade in anthracite thus condemned by this

court, the Holding Company, in January, 1901, purchased a controlling interest in the capital stock of the Central Railroad Company. When this suit was commenced that company was operating 675 miles of track, over which it carried in 1913, 10,783,000 tons of anthracite,—almost one-half of its total freight traffic. Its capital stock was then \$27,436,000 and its funded debt was \$46,881,000.

This Central Company owned, at the time, in excess of eleven-twelfths of the capital stock of the Wilkes-Barre Coal Company, with a capital stock of over \$9,000,000 and a funded debt of about \$17,000,000. And that company owned or had leased in excess of 14,000 acres of coal bearing lands—13,000 acres in the Wyoming field—and in the year ending June 30, 1913, it shipped from its lands thus owned or controlled, 6,243,000 tons of coal, which was sold for over \$20,000,000.

Immediately after this purchase, the president of the Holding Company, Mr. Baer, was made president of the Central Railroad Company and of the Wilkes-Barre Coal Company, and remained such until his death, after the commencement of this suit, and from one-third to one-half of the directors of each company were thereafter chosen from the board of the Holding Company. Thus from the time of this purchase both companies have been actively dominated by the Holding Company management.

It is argued that the Central Railroad, thus acquired, and the Reading system were not competitors, but this question is put beyond discussion by the testimony of Mr. Baer, the president of the Reading Company, and his immediate predecessor in office, Mr. Harris. The former testified:

“Q. You are president of the defendants, the Reading Company, Philadelphia and Reading Railway Company, Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey, the Lehigh and Wilkes-Barre Coal Company and the Temple Iron Company?

"A. I am. . . ."

"Q. What do you regard as the competitors of the Philadelphia and Reading now in New York Harbor, as to anthracite coal? . . ."

"A. All the companies that ship to New York. They would be the Pennsylvania Railroad, the Lehigh Valley, the Delaware and Lackawanna, the Delaware and Hudson, the Erie, Ontario and Western. I guess those are all the roads leading to New York directly or indirectly. [He did not name the Central Company because it was a part of the Reading system when he testified.]"

"Q. Those roads are all carrying anthracite coal to the New York harbor?"

"A. Yes, sir."

"Q. And you regard them as competitors who must be considered in fixing rates?"

"A. Yes, sir; unquestionably."

Mr. Harris testified:

"Q. During the time that you were president of the Philadelphia & Reading Railroad Company, from 1893 to 1901, what were the competitive roads in the coal trade with which you came in competition?"

"A. We came in competition with all the roads that were carrying coal from Pennsylvania."

"Q. Name the principal ones in reference to carrying coal from the coal mines to New York harbor."

"A. The Reading, the Lehigh Valley, *the Central Railroad of New Jersey*, the Delaware, Lackawanna and Western, the Erie, and the Pennsylvania Railroad."

That the Reading Coal Company and the Wilkes-Barre Coal Company were competitors before the latter passed under the control of the Holding Company is obvious, but Mr. Baer put this also beyond dispute by testifying:

"Q. Prior to 1901 were the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Company competitors as sellers of coal in New York harbor?"

"A. Yes; and they are today."

"Q. And generally throughout the eastern territory they were competitors at that time?"

"A. Yes, sir; through that northern territory. Not in this territory, nor in the southern."

Thus, by this purchase, the Reading Holding Company acquired complete control, not only of one of the largest competitive anthracite carriers, but also of one of the largest competitive coal producing and selling companies, in the country. The anthracite tonnage of the Central and Reading Railway Companies thus combined, exceeded, at the time, 18,000,000 tons,—over one-third of the then total production of the country,—and the revenue derived from it was more than one-third of the total earnings of the two railroad companies.

In 1915 the Interstate Commerce Commission concluded an investigation of the "Rates, practices, rules and regulations governing the transportation of anthracite coal," which had been in progress for three years. The eleven initial anthracite carriers which have lines penetrating the coal producing region were required to furnish special reports as to their anthracite coal transportation operations, and they appeared and participated in the hearing. The result of this exhaustive investigation was that the Commission found: that since about 1901, with variations and exceptions which are negligible here, the carriers have had the same fixed and flat rates to tidewater, regardless of the distance and character of the haul; that these rates were the result of coöperation or combination among the carriers; and that they were excessive to such an extent that material reductions by all of the carriers were ordered, including, of course, those of the Central and Reading companies. The Commission also found, and this appears in the record of this case, that the Reading Coal Company had never paid any dividends on its stock, and that, while the books of the Holding Company showed the Coal Company to have been indebted to it

in a sum exceeding \$68,000,000 for advances of capital made by the Reading *Railroad* Company before the re-organization in 1896, it has paid interest thereon only occasionally and in such small amounts that up to 1913 it fell short by more than \$30,000,000 of equaling 4% per annum on the indebtedness. In the meantime advances of large sums had been made by the Holding Company to the Coal Company and unusual credits had been allowed the latter in the payment of its freight bills. This dealing of the Holding Company with the Reading Coal Company, and similar dealing of the Central Company with the Wilkes-Barre Coal Company and the Navigation Company are denounced by the Commission as unlawful discrimination against other shippers of coal over the rails of these two companies, and, obviously, such favoritism tends to discourage competition and to unduly restrain interstate commerce.

Upon this history of the transactions involved, not controverted save as to some findings of the Interstate Commerce Commission, we must proceed to judgment, and very certainly it makes a case calling for the application of repeated decisions of this court, which clearly rule it.

It will be convenient to first dispose of several minor contentions.

In 1871 the Navigation Company leased the Lehigh & Susquehanna Railroad, which it owned, to the Central Railroad Company, by an instrument containing a covenant which the Government claims requires the Navigation Company to ship to market over the leased line three-fourths of all of the coal which it should produce in the future. This covenant has been amended and supplemented by several agreements but not so as to essentially modify it with respect to the contention we are to consider.

It is argued that this covenant necessarily imposed an undue restriction upon the Navigation Company in

selecting its markets and in shipping its coal, in violation of the Anti-Trust Act.

It is not entirely clear that the covenant will bear the restrictive interpretation as to shipments which the Government puts upon it, but, assuming that it may be so interpreted, nevertheless, the conditions and circumstances of the case considered, the result contended for cannot be allowed.

When the lease was made, in 1871, the Central Railroad extended from Jersey City to its western terminus at Phillipsburg, New Jersey, and it was without access to the coal fields. The Lehigh and Susquehanna Railroad was about 100 miles in length and extended from Phillipsburg into the Wyoming field, where the Navigation Company owned extensive coal producing properties and mines. The lines of the two companies were in no sense competitive, but, on the contrary, the Lehigh and Susquehanna line served as a natural extension of the Central Company's lines to the great tonnage producing coal districts. The rental to be paid was one-third of the gross earnings of the railroad and it was natural and "normal" that the lessor should desire that the traffic should continue to be as large as possible. Plainly this covenant was not written with the purpose of suppressing interstate commerce and the history of its operation shows that, instead of suppressing it, it has greatly promoted it. The claim is quite too insubstantial to be entertained and the decree of the District Court with respect to it will be affirmed and the bill, as to it, dismissed.

In many leases for the operation of coal producing lands the Reading Coal Company and the Wilkes-Barre Coal Company incorporated a covenant that the lessee should ship all coal mined by rail routes, which were named or which were to be designated. Since this covenant was resorted to as a part of the scheme to control the mining and transportation of coal, which is condemned as unlawful in this opinion, the decree of the District Court

enjoining the lessors and the other defendants herein from attempting to enforce such covenants will be affirmed.

The other charges against the Lehigh Coal and Navigation Company and the case stated in the bill with respect to the Wilmington & Northern Railroad Company, the Lehigh & Hudson River Railway Company, and the Lehigh & New England Railroad Company are substantially abandoned in the Government's brief and, having regard to the results arrived at with respect to the principal defendants, the ends of justice will be best served by dismissing the bill as to all of these defendants, without prejudice, as was done by the District Court as to all but the Wilmington and Northern Railroad Company, as to which the dismissal was unqualified. A majority of the individual defendants have died since the suit was instituted and their successors in office have not been made parties, and, since the conclusion to be announced can be given full effect by an appropriate decree against the corporation defendants, the case as against the remaining individual defendants need not be considered, and as to them the bill will be dismissed without prejudice.

We are thus brought to the consideration of what the decree shall be with respect to the really important defendants in the case, the three Reading companies, the Central Railroad Company of New Jersey and the Wilkes-Barre Coal Company.

Before the reorganization of 1896 the gathering of more than two-thirds of the acreage of the Schuylkill field into the control of the two Reading Companies was, as their reports show, for the frankly avowed purpose, then not forbidden by statute, of monopolizing the production, transportation and sale of the anthracite coal of the largest of the three sources of supply.

When in 1896 the problem was presented of reorganizing the financial affairs of the two companies, it was not

solved, as it might have been, by creating separate coal and railroad companies to conduct independently interstate commerce in the two departments to which their railroad and coal properties were adapted, but, on the contrary, and very obviously for the purpose of evading the provision of the constitution of Pennsylvania prohibiting any incorporated common carrier from, directly or indirectly, engaging in mining "articles" for transportation over its lines (Constitution of Pennsylvania, 1874, Art. 17, § 5), and also of evading the provisions of the Federal Anti-Trust Act against restraining and monopolizing interstate commerce, resort was had to the holding company device, by which one company was given unrestricted control over the other two, with the power, inherent in that form of organization, of continuing and carrying forward the restraint and monopoly which had previously been acquired over that large volume of interstate commerce which was to be conducted by the coal and railroad companies.

Again, when in 1901 a rivalry, imaginary or real, arose for the control of the Central Railroad Company, the Holding Company, regardless of the law, did not hesitate to purchase control of that great competing anthracite coal carrying system, with its extensive coal owning and mining subsidiary. This acquisition placed the Holding Company in a position of dominating control not only over two great competing interstate railroad carriers but also over two great competing coal companies, engaged extensively in mining and selling anthracite coal, which must be transported to interstate markets over the controlled interstate lines of railway.

Again, and obviously, this dominating power was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate, calculated purchase for control.

That such a power, so obtained, regardless of the use

made of it, constitutes a menace to and an undue restraint upon interstate commerce within the meaning of the Anti-Trust Act, has been frequently held by this court.

Thus, in *Northern Securities Co. v. United States*, 193 U. S. 197, 327, when dealing with a holding company, such as we have here, this court, in 1903, held:

"No scheme or device could more certainly come within the words of the act—'combination in the form of a trust or otherwise . . . in restraint of commerce among the several States or with foreign nations,'—or could more effectively and certainly suppress free competition between the constituent companies. . . . *The mere existence of such a combination and the power acquired by the holding company as its trustee, constitute a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected.*"

And again, in *United States v. Union Pacific R. R. Co.*, 226 U. S. 61, 88, decided nine years later, in 1912, this court held:

"The consolidation of two great competing systems of railroad engaged in interstate commerce by transfer to one of a dominating stock interest in the other creates a combination which restrains interstate commerce within the meaning of the statute, because, in destroying or greatly abridging the free operation of competition theretofore existing, it tends to higher rates. . . . Nor does it make any difference that rates for the time being may not be raised and much money be spent in improvements after the combination is effected. *It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act.*"

It will suffice to add that this doctrine was referred to as the settled conclusion of this court, in 1914, when dis-

cussing a similar state Anti-Trust Act in *International Harvester Co. v. Missouri*, 234 U. S. 199, 209, it was said:

"The specification under this head is that the Supreme Court [of Missouri] found, it is contended, benefit—not injury—to the public had resulted from the alleged combination. Granting that this is not an overstatement of the opinion the answer is immediate. *It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intention and has had some good effect.* . . . The purpose of such statutes is to secure competition and preclude combinations which tend to defeat it."

Thus, this record clearly shows a group of men selecting the Holding Company with an "omnibus" charter and not only investing it by stock control with such complete dominion over two great competing interstate carriers and over two great competing coal companies extensively engaged in interstate commerce in anthracite coal as to bring it, without more, within the condemnation of the Anti-Trust Act, but it also shows that this power of control was actually used, once successfully, to suppress the building of a prospective competitive railway line, and a second time, successfully until this court condemned the 65% contracts as illegal, to suppress the last prospect of competition in anthracite production and transportation. To this it must be added that up to the time when this suit was commenced this Holding Company had continued in active, dominating control of the Reading Railway Company and of the competing Central Railroad system, and also of the two coal companies, thus effectually suppressing all competition between the four companies and pooling their earnings. It is difficult to imagine a clearer case and in all essential particulars it rests on undisputed conduct and upon perfectly established law. It is ruled by many decisions of this court,

but specifically and clearly by *United States v. Union Pacific R. R. Co.*, *supra*.

For flagrant violation of the first and second sections of the Anti-Trust Act, the relations between the Reading Company, the Reading Railway Company and the Reading Coal Company and between these companies and the Central Railroad Company of New Jersey must be so dissolved as to give to each of them a position in all respects independent and free from stock or other control of either of the other corporations.

With respect to the contention that the commodities clause of the Act of June 29, 1906, 34 Stat. 584, 585, is being violated by the Reading Railway Company and the Central Railroad Company:

The Circuit Judges centering their attention: upon the fact that the Reading Railway Company did not own any of the stock of the Reading Coal Company; that the two companies had separate forces of operatives and separate accounting systems; and upon the importance of maintaining "the theory of separate corporate entity" as a legal doctrine, concluded, upon the authority of *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 413, that the evidence did not justify holding that in transporting the products of the Reading Coal Company's mines to market the Reading Railway Company was carrying a commodity "mined, or produced by it, or under its authority" or which it owned "in whole, or in part," or in which it had "any interest direct or indirect."

But the question which we have presented by this branch of the case is not the technical one of whether ownership by a railroad company of stock in a coal company renders it unlawful for the former to carry the product of the latter, for here the railroad company did not own any of the stock of the coal company. The real question is whether combining in a single corporation the ownership of all of the stock of a carrier and of all of the stock of a coal company results in such community of

interest or title in the product of the latter as to bring the case within the scope of the provisions of the act.

The purpose of the commodity clause was to put an end to the injustice to the shipping public, which experience had shown to result from discriminations of various kinds, which inevitably grew up where a railroad company occupied the inconsistent positions of carrier and shipper. Plainly in such a case as we have here this evil would be present as fully as if the title to both the coal lands and the railroads were in the Holding Company, for all of the profits realized from the operations of the two must find their way ultimately into its treasury,—any discriminating practice which would harm the general shipper would profit the Holding Company. Being thus clearly within the evil to be remedied, there remains the question whether such a controlling stock ownership in a corporation is fairly within the scope of the language of the statute.

In terms the act declares that it shall be unlawful for any railroad company to transport in interstate commerce "any article or commodity . . . mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect."

Accepting the risk of obscuring the obvious by discussing it, and without splitting hairs as to where the naked legal title to the coal would be when in transit, we may be sure that it was mined and produced under the same "authority" that transported it over the railroad. All three of the Reading companies had the same officers and directors and it was under their authority that the mines were worked and the railroad operated, and they exercised that authority in the one case in precisely the same character as in the other—as officials of the Holding Company. The manner in which the stock of the three was held resulted, and was intended to result, in the abdication of all independent corporate action by both the

Railway Company and the Coal Company, involving as it did the surrender to the Holding Company of the entire conduct of their affairs. It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same "authority" that operated the Reading Railway lines. The case falls clearly within the scope of the act, and for the violation of this commodity clause, as well as for its violation of the Anti-Trust Act, the combination between the Reading Railway Company and the Reading Coal Company must be dissolved.

The relation between the Central Railroad Company and the Wilkes-Barre Coal Company presents a different question, for here the Railroad Company owns over eleven-twelfths of the stock of the Coal Company, and therefore the holding in 213 U. S. 366, *supra*, is especially pressed in argument,—that the ownership of stock by a railroad company in a coal company does not cause the former to have such an interest in a legal or equitable sense in the product of the latter as to bring it within the prohibition of the act. But this holding was considered in *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 257, 272, and it was there held not applicable where a railroad company used its stock ownership for the purpose of securing a complete control over the affairs of a coal company, and of treating it as a mere agency or department of the owning company. This rule was repeated and applied in *United States v. Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516, 529. It results that it may confidently be stated that the law upon this subject now is, that while the ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining com-

pany, yet where such ownership of stock is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may require. *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 257, 272, 273; *United States v. Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516, 529; *Chicago, Milwaukee & St. Paul Ry. Co. v. Minneapolis Civic & Commerce Association*, 247 U. S. 490, 501.

Applying this rule of law to the relation between the Central Railroad Company and the Wilkes-Barre Coal Company, with the former owning over eleven-twelfths of the capital stock of the latter and using it as the coal mining department of its organization, we cannot doubt that it falls within the condemnation of the commodities clause and that this relation must also, for this reason, be dissolved.

It results that the decree of the District Court will be affirmed, as to the Lehigh Coal and Navigation Company, the Lehigh and New England Railroad Company, the Lehigh and Hudson River Railway Company, as to the restrictive covenants in the mining leases with respect to the shipping of coal, as to the dissolution of the combination between the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company, maintained through the Reading Company and the Central Railroad Company of New Jersey. As to the Wilmington and Northern Railroad Company and as to the individual defendants, the bill will be dismissed without prejudice. As to the Reading Company, the Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company and the

Central Railroad Company of New Jersey, the decree of the District Court will be reversed and the cause remanded with directions to enter a decree in conformity with this opinion, dissolving the combination of the Reading Company, the Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, existing and maintained through the Reading Company, with such provision for the disposition of the shares of stock and bonds and other property of the various companies, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other, of the Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, and also that such disposition shall be made by the decree of the stocks and bonds of the Lehigh and Wilkes-Barre Coal Company, held by the Central Railroad Company of New Jersey, as may be necessary to establish entire independence between these two companies to the end that the affairs of all of these now combined companies may be conducted in harmony with the law.

Affirmed in part; reversed in part, and remanded with direction to enter a decree in conformity with this opinion.

MR. CHIEF JUSTICE WHITE, MR. JUSTICE HOLMES and MR. JUSTICE VAN DEVANTER, dissenting.

Except in so far as the decree below commanded a separation of interest between the Central Railroad of New Jersey and the Lehigh & Wilkes-Barre Coal Company, the court below dismissed, for want of equity, the bill of the United States brought to sever the existing relations between the Reading Company, the Philadelphia

& Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, the Central Railroad of New Jersey, the Lehigh & Wilkes-Barre Coal Company, and other corporations, on the ground that the relations between those companies resulted in a monopoly or combination in restraint of trade in violation of the Sherman Act and gave rise to a disregard of the commodities clause of the act of Congress.

By the opinion now announced, this action of the court below, in so far as it directed a dismissal, is reversed and virtually the full relief prayed by the Government is therefore granted. We are unable to concur in this conclusion because in our opinion neither the contentions as to the Sherman Act, nor the reliance upon the commodities clause, except to the extent that in the particulars stated they were sustained by the court below, have any foundation to rest upon. We do not state at any length the reasons which lead us to this view because the court below, composed of three circuit judges, in a comprehensive and clear opinion announced by McPherson, Judge, sustains the correctness of the action which it took and also demonstrates the error involved in the decree of this court reversing its action. *United States v. Reading Co.*, 226 Fed. Rep. 229. To that opinion we therefore refer as stating the reasons for our dissent.

Mandate.

(Filed August 13, 1920).

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

[SEAL] To the Honorable the Judges of the District Court
of the United States for the Eastern District
of Pennsylvania.

GREETING:

WHEREAS, lately in the District Court of the United States for the Eastern District of Pennsylvania, before you, or some of you, in a cause between The United States of America, petitioner, and Reading Company, Philadelphia & Reading Railway Company, *et al.*, defendants, No. 1095, September Sessions, 1913, wherein the decree of the said District Court, entered in said cause on the 28th day of October, A. D. 1915, is in the following words, viz:

"This cause having come on for final hearing upon pleadings and proofs, and having been argued by counsel before three circuit Judges sitting under the provisions of the expediting act of February 11, 1903 (32 Stat. 823), as amended June 25, 1910 (36 Stat., 854); and the pleadings, proofs, and arguments having been considered, and the opinion of the Court having been filed; it is now, this 28th day of October, 1915, ordered, adjudged and decreed;

1. Except as hereinafter provided, the bill, or petition, is dismissed.

2. The charge therein contained, namely, that the lease of the Lehigh & Susquehanna Railroad made between the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey, contained in the writings dated respectively March 31, 1871, May 27, 1883, and June 28, 1887, is in violation of the anti-trust act of July 2, 1890 (26 Stat., 209, c. 647) is not sustained, and in respect thereof the petition is dismissed. But, in respect of all other charges against the Lehigh Coal & Navigation Company, and in respect of all charges against the Lehigh

& New England Railroad Company, and the Lehigh & Hudson River Railway Company, the petition is dismissed without prejudice.

3. The charge that the Central Railroad Company is violating the commodities clause of the act to regulate commerce (34 Stat., 584, c. 3591), is dismissed, but without prejudice.

4. The union of the Philadelphia & Reading Coal & Iron Company and the Lehigh & Wilkes-Barre Coal Company through the instrumentality of the Reading Company, a holding corporation—which owns the entire capital stock of the Philadelphia & Reading Coal & Iron Company and a majority of the capital stock of the Central Railroad Company, the last named company owning in turn a majority of the capital stock of the Lehigh & Wilkes-Barre Coal Company—is a combination in restraint of trade and violates the antitrust act of July 2, 1890 (26 Stat., 209, c. 647).

5. Within 90 days from the entry of this decree—or in case an appeal be taken therefrom to the Supreme Court of the United States and duly prosecuted, then within 90 days after the filing in this court of the mandate of the Supreme Court affirming the decree—the defendants shall submit to this court a plan for the disposal by the Central Railroad Company of all the stock, bonds, or other securities of the Lehigh & Wilkes-Barre Coal Company now owned or in any manner controlled by it; the plan to be such as will effectually dissolve the unlawful combination and create a situation in harmony with law. If the defendants shall fail to present a plan within the period stated, or if the plan submitted shall be rejected, this court will take such further steps, by receivership or otherwise as may then seem necessary, to dispose of the stock, bonds and securities referred to, and to dissolve effectually the unlawful combination, so as to create a situation in harmony with law. For this purpose the Court retains jurisdiction of the cause.

6. Pending the disposal of the stock, bonds, and securities referred to, the Central Railroad Company, the Reading Company, and all corporations con-

trolled by them or either of them, or subject to a common control with them or either of them, through stock ownership or otherwise, their officers, directors, agents and employees, are hereby enjoined from voting or attempting to vote on any stock of the Lehigh & Wilkes-Barre Coal Company, from collecting or receiving any dividends or interest upon its stock, bonds, or other securities, and from exercising or attempting to exercise any control, direction, supervision, or influence whatever over its acts, either by proxies from other stockholders or otherwise. And the Central Railroad Company, the Reading Company, and all corporations controlled by them or either of them, or subject to a common control with them or either of them, through stock ownership or otherwise, their officers, directors, agents, and employees, are perpetually enjoined from hereafter acquiring, directly or indirectly, any interest in or control over the stock, bonds, or other securities of the Lehigh & Wilkes-Barre Coal Company or any control over said company. And the Central Railroad Company is hereby enjoined from requiring, or attempting or threatening to require, the Lehigh & Wilkes-Barre Coal Company or any of its subsidiary companies to ship all or any part of their coal tonnage over any railroad or line of transportation operated or designated by the Central Railroad Company.

7. All clauses, stipulations, or covenants in leases of coal lands made by the Philadelphia & Reading Coal & Iron Company, or by the Lehigh & Wilkes-Barre Coal Company, or by any company subsidiary to or controlled by either, that require or purport to require the lessees to ship coal over any particular railroad or railroads, or over such route as may be designated by any railroad company or companies, are hereby declared to violate the antitrust act of July 2, 1890, and therefore to be void; and the coal companies and the railroad Companies that are parties to this decree, their officers, directors, agents, and employees, are hereby enjoined from enforcing or attempting to enforce or threatening to enforce such clauses, stipulations or covenants.

8. The Government is entitled to recover from the Reading Company so much of its taxable costs in the

district court as relate to the subject-matter of the fourth, fifth and seventh sections of this decree.

JOS. BUFFINGTON

WILLIAM H. HUNT

JOHN B. MCPHERSON

United States Circuit Judges."

as by the inspection of the transcript of the record of the said District Court, which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of an appeal and a cross-appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord one thousand nine hundred and nineteen, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, on appeal and cross-appeal, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed in part and reversed in part.

AND IT IS FURTHER ORDERED that this cause be, and the same is hereby remanded to the said District Court with direction to enter a decree in conformity with the opinion of this Court.

APRIL 26, 1920.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeals notwithstanding.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the United States, the fifteenth day of June, in the year of our Lord one thousand nine hundred and twenty.

(Sgd) JAMES D. MAHER

Clerk of the Supreme Court of the United States.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA, Petitioner,

v.

READING COMPANY, PHILADELPHIA & READING RAILWAY COMPANY, THE PHILADELPHIA & READING COAL & IRON COMPANY, THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE LEHIGH & WILKES-BARRE COAL COMPANY, THE LEHIGH COAL & NAVIGATION COMPANY, WILMINGTON & NORTHERN RAILROAD COMPANY, LEHIGH & HUDSON RIVER RAILWAY COMPANY, LEHIGH & NEW ENGLAND RAILROAD COMPANY, GEORGE F. BAER, GEORGE F. BAKER, EDWARD T. STOTESBURY, HENRY C. FRICK, PETER A. B. WIDENER, HENRY A. DUPONT, DANIEL WILLARD, HENRY P. MCKEAN, and SAMUEL DICKSON, Defendants.

Decree on Mandate.

(Filed October 8, 1920.)

The above entitled cause having come on for hearing before this Court at the March Term, 1914, and having been determined in part in favor and in part against the

petitioner, and the said cause having been appealed by both parties to the Supreme Court of the United States, and that court having affirmed in part and in part reversed the decree of this Court, and a mandate from the Supreme Court in proper form containing directions as to the decree to be entered having been filed here on the 13th day of August, 1920:

Now, therefore, this cause having come on for hearing at the present term, and the Court being fully advised in the premises, doth hereby order, adjudge and decree:

PART I. FINDINGS.

FIRST. That Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, and The Lehigh & Wilkes-Barre Coal Company, have been and are engaged in a combination in restraint of interstate trade and commerce in the production, sale, and transportation of anthracite coal in violation of Section 1 of the Act of Congress approved July 1, 1890, entitled, "An Act to protect against unlawful restraints and monopolies."

SECOND. That Reading Company, Philadelphia & Reading Railway Company, The Philadelphia and Reading Coal & Iron Company, The Central Railroad Company of New Jersey, and The Lehigh & Wilkes-Barre Coal Company, have been and are monopolizing and attempting to monopolize a part of interstate trade and commerce in the production, sale, and transportation of anthracite coal in violation of Section 2 of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

THIRD. That the transportation in interstate commerce by Philadelphia & Reading Railway Company of anthracite coal mined or owned by the Philadelphia & Reading Coal & Iron Company, in view of the relations existing between those companies as set forth in the opinion of the Supreme Court, has been and is in violation of the so-called Commodities Clause of the Act to Regulate Commerce as amended June 29, 1906.

FOURTH. That the transportation in interstate commerce by The Central Railroad Company of New Jersey of anthracite coal mined or owned by The Lehigh & Wilkes-Barre Coal Company, in view of the relations existing between those companies as set forth in the opinion of the Supreme Court, has been and is in violation of the so-called Commodities Clause of the Act to Regulate Commerce as amended June 29, 1906.

PART II. AS TO THE FORMER DECREE.

And it is further ordered, adjudged and decreed;

FIRST. That except in the particulars hereinafter specifically mentioned, the final decree entered herein on October 28, 1915 be, and the same is hereby, reversed and set aside.

SECOND. That the provision of said decree dismissing the petition as to the defendants George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. duPont, Daniel Willard, Henry P. McKean and Samuel Dickson (or the survivors of them), and the Wilmington & Northern Railroad Company, is reversed; and the petition as to these defendants is dismissed, without prejudice.

THIRD. That the provision of said decree dismissing the Government's petition in so far as the same related

to the lease of the Lehigh & Susquehanna Railroad by the Lehigh Coal & Navigation Company to the Central Railroad Company of New Jersey, be and the same is hereby affirmed.

FOURTH. That the provision of said decree dismissing without prejudice the Government's petition in so far as the same related to all other charges against the Lehigh Coal & Navigation Company, and in respect of all charges against the Lehigh & New England Railroad Company and the Lehigh & Hudson River Railway Company, be and the same is hereby affirmed.

FIFTH. That paragraph 4 of said decree providing as follows:

The union of the Philadelphia & Reading Coal & Iron Co. and the Lehigh & Wilkes-Barre Coal Co. through the instrumentality of the Reading Co., a holding corporation—which owns the entire capital stock of the Philadelphia & Reading Coal & Iron Co. and a majority of the capital stock of the Central Railroad Co., the last-named company owning in turn a majority of the capital stock of the Lehigh & Wilkes-Barre Coal Co.—is a combination in restraint of trade and violates the anti-trust act of July 2, 1890 (26 Stat. 209, c. 647).

be and the same is hereby affirmed.

SIXTH. That paragraph 5 of said decree providing as follows:

Within 90 days from the entry of this decree, or in case an appeal be taken therefrom to the Supreme Court of the United States and duly prosecuted, then within 90 days after the filing in this court of the mandate of the Supreme Court affirming the decree, the defendants shall submit to this court a plan for the disposal by the Central Railroad Co. of all the stock, bonds, or other securities of the Lehigh & Wilkes-Barre Coal Co. now owned or in any man-

ner controlled by it; the plan to be such as will effectually dissolve the unlawful combination and create a situation in harmony with law. If the defendants shall fail to present a plan within the period stated, or if the plan submitted shall be rejected, this court will take such further steps, by receivership or otherwise as may then seem necessary, to dispose of the stock, bonds, and securities referred to, and to dissolve effectually the unlawful combination, so as to create a situation in harmony with law. For this purpose the court retains jurisdiction of the cause.

be and the same is hereby affirmed.

SEVENTH. That paragraph 6 of said decree providing as follows:

Pending the disposal of the stock, bonds and securities referred to, the Central Railroad Co., the Reading Co., and all corporations controlled by them or either of them, or subject to a common control with them or either of them, through stock ownership or otherwise, their officers, directors, agents, and employees, are hereby enjoined from voting or attempting to vote on any stock of the Lehigh & Wilkes-Barre Coal Co., from collecting or receiving any dividends or interest upon its stock, bonds, or other securities, and from exercising or attempting to exercise any control, direction, supervision, or influence whatever over its acts, either by proxies from other stockholders or otherwise. And the Central Railroad Co., the Reading Co., and all corporations controlled by them or either of them, or subject to a common control with them or either of them, through stock ownership or otherwise, their officers, directors, agents, and employees, are perpetually enjoined from hereafter acquiring, directly or indirectly, any interest in or control over the stock, bonds, or other securities of the Lehigh & Wilkes-Barre Coal Co., or any control over said company. And the Central Railroad Co., is hereby enjoined from requiring, or attempting or threatening to require, the Lehigh & Wilkes-Barre Coal Co. or

any of its subsidiary companies to ship all or any part of their coal tonnage over any railroad or line of transportation operated or designated by the Central Railroad Co.

be and the same is hereby affirmed.

EIGHTH. That paragraph 7 of said decree providing as follows:

All clauses, stipulations, or covenants in leases of coal lands made by the Philadelphia & Reading Coal & Iron Co. or by the Lehigh & Wilkes-Barre Coal Co., or by any company subsidiary to or controlled by either, that require or purport to require the lessees to ship coal over any particular railroad or railroads, or over such route as may be designated by any railroad company or companies, are hereby declared to violate the antitrust act of July 2, 1890, and therefore to be void; and the coal companies and the railroad companies that are parties to this decree, their officers, directors, agents, and employees, are hereby enjoined from enforcing or attempting to enforce, or threatening to enforce, such clauses, stipulations, or covenants.

be and the same is hereby affirmed.

PART III. PROVISIONS RELATING TO DISSOLUTION.

And it is further ordered, adjudged and decreed:

FIRST. That within 90 days from the entry of this decree the defendants shall submit to this court a plan for the dissolution of the unlawful combination between the Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, the Central Railroad Company of New Jersey and the Lehigh & Wilkes-Barre Coal Company, existing and maintained through the Reading Company, with

such provision for the disposition of the shares of stock and bonds and other property of the various companies, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other, of the Philadelphia & Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey and the Lehigh & Wilkes-Barre Coal Company, to the end that the affairs of all these now combined companies may be conducted in harmony with the law.

SECOND. That the court upon application of the defendants and upon an adequate showing of the necessity therefor, may grant an extension of the time in which to submit said plan of dissolution; *Provided*, that the plan for the separation of the Central Railroad Company of New Jersey and The Lehigh & Wilkes-Barre Coal Company which defendants are required to submit by paragraph sixth of Part II of this decree, may be included in and submitted along with the general plan of dissolution provided for in the above paragraph; *Provided further*, that the United States may have 30 days from and after the submission of any plan in which to file its suggestions, which suggestions the Court may request the United States to embody in a plan of dissolution to be framed by it.

THIRD. That if the defendants shall fail to present a plan within the period stated, or within any period allowed by the court by way of extension, this court will take such further steps as may then seem necessary to dispose of the stock, bonds, and property referred to, and to dissolve effectually the unlawful combination, so as to recreate out of the elements composing said combination a new situation in harmony with law. For this purpose the court retains jurisdiction of the cause.

PART IV. INJUNCTIVE PROVISIONS.

And it is further ordered, adjudged and decreed:

FIRST. That pending the disposal by the Reading Company of the stocks, bonds, and other property of the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, and The Central Railroad Company of New Jersey, the Reading Company and all corporations controlled by it through stock ownership or otherwise, their officers, directors, agents and employees, be and they are hereby enjoined from voting or attempting to vote any stock of the said Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, or The Central Railroad Company of New Jersey, and from exercising or attempting to exercise any control over the corporate policies of these Companies in such a manner as to interfere with their independence of action pending the final decree of this Court; *Provided*, That nothing in this decree contained shall prevent the Reading Company or its officers, agents, or employees from voting the stock of, or exercising control over, the Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, and The Central Railroad Company of New Jersey, in such way and to such extent as may be expressly approved by this court for the purpose of carrying out this decree.

SECOND. Pending the dissolution of the combination and the re-creation from the elements now composing it of a new condition honestly in harmony with the law under the direction of this court, all the defendants, their agents and servants, are hereby restrained and enjoined from doing any act which might further extend or enlarge the power of the combination by any means or devices whatsoever.

PART V. Costs.

And be it further ordered, adjudged, and decreed :

FIRST. That the petitioner, the United States of America, have and recover from the defendants, the Reading Company, Philadelphia and Reading Railway Company, Philadelphia & Reading Coal and Iron Company, The Central Railroad Company of New Jersey, and The Lehigh & Wilkes-Barre Coal Company, its costs and disbursements to be taxed by the Court.

JOS. BUFFINGTON

VICTOR B. WOOLLEY

J. WARREN DAVIS

Circuit Judges.

Dated October 8, 1920.

Plan of Reading Company.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA, Petitioner,

VS.

READING COMPANY, PHILADELPHIA & READING RAILWAY COMPANY, THE PHILADELPHIA & READING COAL & IRON COMPANY, THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE LEHIGH & WILKES-BARRE COAL COMPANY, THE LEHIGH COAL & NAVIGATION COMPANY, WILMINGTON & NORTHERN RAILROAD COMPANY, LEHIGH & HUDSON RIVER RAILWAY COMPANY, LEHIGH & NEW ENGLAND RAILROAD COMPANY, GEORGE F. BAER, GEORGE F. BAKER, EDWARD T. STOTESBURY, HENRY C. FRICK, PETER A. B. WIDENER, HENRY A. DUPONT, DANIEL WILLARD, HENRY P. MCKEAN and SAMUEL DICKSON, Defendants.

(Filed Feb. 14, 1921.)

In pursuance of the decree of mandate of this Court entered October 8th, 1920, defendants, Reading Company Philadelphia and Reading Railway Company, and Th

Philadelphia & Reading Coal & Iron Company, respectfully submit the following plan:—

1. The Reading Company will assume the \$96,524,000 General Mortgage 4% bonds, which are a joint obligation of the Reading Company and The Philadelphia & Reading Coal & Iron Company (hereinafter called the Coal Company), and will agree to save the Coal Company and its property harmless therefrom.

2. The Coal Company will pay to the Reading Company \$10,000,000 in cash, or current assets at market value, and \$25,000,000 in 4% mortgage bonds of the Coal Company. The mortgage under which they are to be issued may contain provision for the issue thereunder of additional bonds to provide for additions, betterments and improvements to a limited amount, to be determined by the Reading Company and the Coal Company prior to the creation of the mortgage, and shall contain provision for a proper sinking fund for the retirement of bonds issued thereunder. The \$25,000,000 bonds issued by the Coal Company to the Reading Company shall mature on January 1, 1997, the same date as the General Mortgage bonds. The bonds issued by the Coal Company shall be subject to redemption at par and accrued interest on any semi-annual interest date as a whole but not in part, except out of the moneys in the sinking fund.

3. Except as otherwise herein expressly provided, general releases of all claims and liabilities as between the Reading Company and the Coal Company, including the claim of approximately \$70,000,000 carried on the books of the Reading Company as an asset and on the books of the Coal Company as a liability, will be exchanged.

4. The Reading Company will agree that it will obtain the release of the coal property from the lien of the General Mortgage and the discharge of the Coal Company

from liability on the General Mortgage bonds, provided such release and discharge can be secured by payment by the Reading Company to the bondholders of a premium not exceeding 10% upon the par value of the outstanding General Mortgage bonds. Such release and payment will be made from time to time as the acquiescence of the several bondholders shall be given. The Reading Company will make payment of said premium on the order of the committee to be formed in the interest of the bondholders. Said committee will call for the deposit of bonds and will be authorized by the depositors to return to them their bonds stamped as assenting to the release and discharge above mentioned, or to return to them, in the discretion of the committee, refunding and improvement mortgage bonds of the Reading Company hereinafter described for an equal principal amount and bearing 4% interest. Though the committee will order payment of the premium from time to time as the bonds are deposited, it will, in the first instance, cause to be issued depository receipts for the General Mortgage bonds and will retain the General Mortgage bonds until it shall have determined that a sufficient percentage of bonds has been deposited to declare in effect the plan of exchange for refunding and improvement mortgage bonds, or that in its judgment it is improbable that a sufficient amount of bonds will be so deposited. Upon such determination it shall deliver to the holders of the depository receipts the refunding and improvement mortgage bonds or General Mortgage bonds stamped as aforesaid, as the case may be. The depository will collect and pay out the interest on the deposited bonds pending the determination of the committee as aforesaid.

5. It is assumed that the Attorney General will ask the Court to direct the release of the stock of the Coal Company from the lien of the General Mortgage on such terms as the Court may fix. If practicable the Coal Com-

pany will consolidate with Delaware Coal Company, of which it owns the entire capital stock, and the consolidated company will issue stock without par value to the Reading Company. If that is not practicable, a new corporation will be created to acquire from the Reading Company the stock of the Coal Company, or the interest of the Reading Company therein, and such new corporation will issue no par value stock. The number of shares to be issued of the consolidated Coal Company or of such new corporation may be 1,400,000.

Such no par value stock will be sold to the stockholders of the Reading Company, preferred and common, share and share alike, for \$5,600,000., or \$2.00 for each share of Reading Stock. It is proposed to carry out this sale, in accordance with the precedent established by the Union Pacific-Southern Pacific case, by distributing to Reading stockholders assignable certificates of interest in the Coal Company stock exchangeable for such stock only when accompanied by an affidavit that the holder is not the owner of any stock of Reading Company. Any further steps, which may be deemed necessary by the Court, will be taken to the end that an independent board and management to be approved by it will be maintained for the Coal Company, so that the independence of this company need not await the necessarily gradual process of the distribution of the stock of the Coal Company among persons not holders of stock in the Reading Company.

6. The Reading Company will merge the Philadelphia & Reading Railway Company under the authority contained in the present charter of the Reading Company, and will subject the Railway property to the direct lien of the General Mortgage. The name of the Reading Company, after merger, will not be changed. The Reading Company will accept the Pennsylvania Constitution of 1874, and it will proceed under the Act of 1856 to sur-

render those of its powers which are inappropriate for a railroad corporation of Pennsylvania. Thus the Reading Company will be in all respects subject to the regulation of State and Federal authorities as a common carrier, and the relation of the Reading Company, as a specially chartered holding company, to the Philadelphia and Reading Railway Company will be terminated.

7. If and whenever the General Mortgage bondholders' committee shall determine to declare the plan of exchange effective, the Reading Company shall execute a refunding and improvement mortgage, which shall constitute a direct lien upon all the railroads, railroad property, railroad equipment and railroad stocks and bonds then owned by the Reading Company or thereafter acquired by means of bonds issued thereunder. Deposited General Mortgage bonds will be kept alive under said refunding and improvement mortgage until the General Mortgage is released. The refunding and improvement mortgage will contain appropriate provision for the reservation of bonds to refund outstanding General Mortgage bonds and other prior lien bonds or obligations. It will be an open mortgage in modern form with appropriate provision for the issue of additional bonds for the acquisition of new property and for additions, betterments and improvements to the mortgaged property.

8. The Court will be asked to defer the actual sale of the stock held by the Reading Company in the Central Railroad of New Jersey pending the grouping of railroads by the Interstate Commerce Commission under the Transportation Act, but subject to the further order of the Court. It is assumed that the Attorney General will ask the Court to make an order assuring the voting of the stock pending such sale in the manner approved by the Court. A detailed plan for the prompt disposition of the

stock of the Lehigh and Wilkes-Barre Coal Company by the Central Railroad of New Jersey has been submitted separately.

WM. CLARKE MASON,
R. C. LEFFINGWELL,
CHAS. HEEBNER,
Of Counsel.

Dated, February 14th, 1921.

Counter Proposal by the United States to Paragraph Eight of the
Plan of Reading Company.

(Filed Feb. 14, 1921.)

Comes now the United States by Frank K. Nebeker, Assistant to the Attorney General, and Abram F. Myers, Special Assistant to the Attorney General, and respectfully represent unto the Court that the provision in the plans submitted by the defendants for the placing in the hands of a trustee of Reading Company's interest in the stock of the Central Railroad Company of New Jersey, pending the working out of a plan for the re-grouping of railroads by the Interstate Commerce Commission under the Transportation Act of 1920, is not a satisfactory compliance with the requirements of the Supreme Court.

Complying with the requirement in the interlocutory decree that the United States shall embody its suggestions in reference to the defendants' plan in a plan of its own, the United States respectfully suggests that the following paragraphs be substituted for paragraph eight of the defendants' plan:—

“Reading Company shall, with all due diligence, offer for sale at a reasonable price and upon reasonable terms the stock of the Central Railroad Company of New Jersey now owned by it for a period of years. If at the expiration of such period a sale of such stock has not been made, then, upon application of the Attorney General, the Court

may decree a sale at public auction at a price not less than a minimum price to be agreed upon between the Reading Company and the Attorney General. During this period Reading Company shall accept any offer by a responsible purchaser made in good faith and at a reasonable price and in the event of any disagreement between an intending purchaser, who has complied with the foregoing provisions, and the Reading Company, then the matter shall be referred to the Attorney General for his advice and if the parties shall still be at a disagreement, then any party (Reading Company, the United States, or the intending purchaser) may bring the matter to the attention of the Court for its decision. A purchaser under this provision must be approved by the Attorney General, and, if a railroad company, shall apply to the Interstate Commerce Commission for its authority to make such purchase under paragraphs two and three of Section 407 of the Transportation Act of 1920.

"For the purposes of carrying out such a provision, jurisdiction of the case shall be retained by the Court."

The suggestions of the Government in reference to the other provisions of defendants' plan, which suggestions relate only to matters of detail, are embodied in the memorandum attached hereto.

FRANK K. NEBEKER,

Assistant to the Attorney General.

A. F. MYERS,

Special Assistant to the Attorney General.

Order.

(Filed Feb. 14, 1921.)

The above case, having come before the Court for further hearing, this fourteenth day of February, A. D. 1921, and, pursuant to the decree of this Court heretofore

entered, a plan for the dissolution of the combination between the Reading Company, the Philadelphia and Reading Railway Company, The Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey, and the Lehigh and Wilkes-Barre Coal Company, having been presented to the Court on behalf of the said companies, and the suggestions of the United States relating to the said plan having also been presented to the Court,

And the Court having been fully advised in the premises by the Attorney General of the United States and counsel for the said companies, defendants;

It is hereby ordered, adjudged and decreed:—

FIRST.—That a copy of the said plan and the suggestions of the United States relating thereto be served upon the Central Union Trust Company, of New York, Trustee under the General Mortgage referred to in the said plan.

SECOND.—That copies of the said plan and the suggestions of the United States relating thereto be filed in the office of the clerk of this Court and with the secretary of the Reading Company at the offices of the said Company in Philadelphia and New York, to be open to the inspection of all stockholders of the said companies, defendants, during the business hours of the said Company.

THIRD.—That on the first day of March, A. D. 1921, at 1.30 o'clock in the afternoon, the Attorney General of the United States and counsel for the defendants will be heard further on the proposed plan and in regard to the subject matter thereof.

Per Curiam,

JB.

**Supplemental Bill by the United States to make Central Union Trust
Company of New York a party to the cause.**

(Filed March 1, 1921.)

TO THE HONORABLE JUDGES OF THE ABOVE NAMED COURT:

Comes now the United States, complainant in the above-entitled cause, by Frank K. Nebeker, Assistant to the Attorney General, and Abram F. Myers, Special Assistant to the Attorney General, and having first obtained leave of Court, files this supplemental bill of complaint alleging as follows:

1. That on the 2nd day of September, 1913, complainant exhibited its original bill of complaint in this Honorable Court against Reading Company and its several corporate subsidiaries and certain others, alleging that the defendants were engaged in a combination in restraint of trade and a monopoly in violation of Sections 1 and 2 of the so-called Sherman Anti-Trust Act of July 2, 1890, and that certain of the defendants were transporting anthracite coal in interstate commerce in violation of the so-called Commodities Clause of the Act to Regulate Commerce as amended June 29, 1906.

2. That by final decree entered by this Court on the 28th day of October, 1915, this cause was determined in part in favor of the complainant and in part in favor of the defendants, and from this decree cross-appeals were taken to the Supreme Court of the United States, where such final decree was in part affirmed and in part reversed, and a mandate in due form from the Supreme Court has been filed in this Court containing directions for the entry of a decree in conformity with the Supreme Court's opinion.

3. That the Central Union Trust Company of New York is a corporation of New York with offices at No. 80

Broadway, and is the trustee under the General Mortgage executed by defendants Reading Company and Philadelphia and Reading Coal and Iron Company on January 5, 1897, as in the original bill, the record, and opinions in this case more particularly set forth.

4. That the aforesaid General Mortgage is the joint obligation of the defendants Reading Company and Philadelphia & Reading Coal & Iron Company and was executed to secure the issue of \$135,000,000 of General Mortgage 4 per cent. bonds. Under and by virtue of said General Mortgage defendant Reading Company has pledged with the Central Union Trust Company of New York, as trustee, numerous stocks and bonds, including the entire capital stock of Philadelphia & Reading Coal & Iron Company, and defendant Reading Coal & Iron Company has conveyed to said trustee (subject to the conditions of the mortgage) its entire physical property.

5. That pursuant to the interlocutory decree entered in this cause on October 8, 1920, defendants have presented to the Court a plan for the dissolution of the unlawful combination existing between the defendants Reading Company, Philadelphia & Reading Railway Company, Philadelphia & Reading Coal & Iron Company, Central Railroad Company of New Jersey, and Lehigh & Wilkes-Barre Coal Company, which plan provides, among other things, for the release of the stock of Reading Coal & Iron Company from the lien of the General Mortgage and the disposition thereof through the stockholders of Reading Company to independent interests, and also for the release of all the property of the Coal Company from the lien of said mortgage and the assumption of the entire obligation thereof by Reading Company.

6. Your petitioner believes and therefore alleges that in order effectually to carry out the plan thus presented

for the dissociation of Reading Company and Reading Coal & Iron Company the said Central Union Trust Company of New York should be made a party defendant to this cause and thus be made subject to any further interlocutory orders or final decree which may be entered herein affecting the stock or property of Reading Coal & Iron Company pledged with said Trust Company under said General Mortgage as security for the before-mentioned 4 per cent. bonds.

To the end, therefore, that said Central Union Trust Company may be made a party defendant to the above-entitled cause, and may be afforded the opportunity to show cause (if cause it has) why the said plan for the dissociation of Reading Company and Reading Coal & Iron Company should not be approved by this Court, and that complainant may have such further general and special relief as the nature of the case may require, may it please the Court to grant to the complainant a writ of subpœna directed to the said Central Union Trust Company commanding it to appear and make answer to the premises and abide by and perform such orders and decrees as to the Court may seem proper.

FRANK K. NEBEKER

Assistant to the Attorney General.

ABRAM F. MYERS

Special Assistant to the Attorney General.

UNITED STATES OF AMERICA, }
District of Columbia, } ss

I, ABRAM F. MYERS, being first duly sworn, say that I am a Special Assistant to the Attorney General, and under the direction of the Attorney General and the Assistant to the Attorney General represent the United States in the above-entitled cause; that I have read the foregoing

supplemental bill and have personal knowledge of the facts therein narrated, and the facts therein alleged as true are true and the facts alleged upon information and belief I verily believe to be true.

ABRAM F. MYERS.

Subscribed and sworn to before me this 28th day of February, 1921.

FODIE B. KENYON,

Notary Public, D. C.

[SEAL]

IN THE
DISTRICT COURT OF THE UNITED STATES
WITHIN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA,
Petitioner,

AGAINST

READING COMPANY, *et al.*,
Defendants.

In Equity
No. 1095.

Petition of Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York for leave to intervene.

(Filed March 15, 1921.)

TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT
OF THE UNITED STATES WITHIN AND FOR THE EASTERN
DISTRICT OF PENNSYLVANIA:

Now come CONTINENTAL INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New York, and FIDELITY-PHENIX FIRE INSURANCE

COMPANY OF NEW YORK, likewise a corporation organized and existing under the laws of the State of New York, and as owners and holders of common stock of the defendant Reading Company present this their petition, and respectfully represent unto this Honorable Court as follows:

1. Your petitioners are each a corporation organized and existing under the laws of the State of New York, and are duly and lawfully authorized to own and hold shares of the capital stock of the defendant Reading Company (hereinafter called Reading Company), and the Continental Insurance Company is the owner and holder of 4,200 shares of Common Stock of the Reading Company and the Fidelity-Phenix Fire Insurance Company of New York is likewise the owner and holder of 4,200 shares of said Common Stock.

2. At a hearing had herein on March 1, 1921, this Honorable Court, by oral order, granted to parties in interest leave to file petitions with respect to the segregation of the properties of the Reading Company and in respect to the Plan for such segregation dated February 14, 1921 (hereinafter referred to as the Plan), submitted to this Honorable Court, and pursuant to leave so granted, your petitioners present this their petition, and beg leave that they be permitted to intervene and object to said Plan and present suggestions for the modification thereof.

ON INFORMATION AND BELIEF

3. The Plan presented to this Honorable Court, by reason of the matters hereinafter set forth, directs in its essence and in effect, a distribution of the surplus and accumulated net earnings of the Reading Company to the holders of the Preferred and Common Stock of the Reading Company upon equal terms, whereas in truth and in fact the

holders of the Common Stock of the Reading Company are, by reason of the matters hereinafter set forth, solely entitled to share in any distribution from such accumulated surplus (excepting only such portion thereof as represents net profits of fiscal years in which "full" dividends, to wit, 4%, were not paid on the First and Second Preferred Stock of the Reading Company) and the aforesaid Plan further directs the payment of approximately \$10,000,000 by the Reading Company to holders of General Mortgage Bonds, as a premium for the release of certain properties from the lien of the General Mortgage securing same, executed by the Reading Company and the Philadelphia & Reading Coal & Iron Company to Central Trust Company of New York, as Trustee, dated January 5, 1897, notwithstanding that such payment and such release are unnecessary to carry out the Decree of Mandate of October 8, 1920, of this Honorable Court and that no equivalent consideration or benefit will accrue therefrom to the Reading Company.

4. In and by a Plan and Agreement, dated December 14, 1895, provision was made for the reorganization of certain properties theretofore owned by the Philadelphia & Reading Railroad Company and the Philadelphia & Reading Coal & Iron Company (hereinafter called the Coal Company). Said Plan and Agreement of Reorganization provided for the issuance by the New Company to be organized thereunder, of \$28,000,000 par value of First Preferred Stock, \$42,000,000 par value of Second Preferred Stock, and \$70,000,000 par value of Common Stock.

With respect to the right to dividends on the First and Second Preferred Stock of such New Company it was provided in and by said Plan and Agreement of Reorganization as follows:

" . . . The First Preferred Stock will entitle the holders to non-cumulative dividends up to 4

per cent. per annum, payable out of net earnings before any dividend shall be paid on the Second Preferred or the Common Stock.

"Non-cumulative 4% Second Preferred Stock . . . which will entitle the holders to non-cumulative dividends up to 4 per cent. per annum, payable out of net earnings before any dividend shall be paid on the Common Stock."

5. Pursuant to an Act of the Legislature of the Commonwealth of Pennsylvania, entitled "An Act to Incorporate the Excelsior Enterprise Company, with power to purchase, improve, use and dispose of property, to aid contractors and others, and for other purposes", approved May 24, 1871, a corporation was organized known as the "Excelsior Enterprise Company".

In and by said Act approved May 24, 1871, the said Excelsior Enterprise Company received the same powers, privileges, franchises and immunities, as had theretofore been conferred in and by an Act of the Legislature of the Commonwealth of Pennsylvania entitled "An Act to Incorporate the Pennsylvania Company" approved April 7, 1870, and also the same powers, privileges, franchises and immunities as had been granted in and by any then existing supplements to the charter of the Pennsylvania Company conferred by the aforesaid Act approved April 7, 1870. In and by the provisions of Section 5 of the Act of April 7, 1870, the capital of the Pennsylvania Company (and hence of the Excelsior Enterprise Company), was fixed at \$100,000., divided into 2,000 shares of \$50. each, "with the privilege of increasing same by a vote of the holders of a majority of the stock present at any annual or special meeting to such an amount as they may from time to time deem needful".

In and by a further act of the Legislature of the Commonwealth of Pennsylvania entitled "An Act Supplementary to an Act entitled 'An Act to Incorporate the Pennsylvania Company', approved the seventh day of

April, *Anno Domini* One thousand eight hundred and seventy, authorizing the issue of common or preferred stock and authorizing the sale or disposal thereof by the Company", approved February 18, 1871, it was provided that the capital stock of the Pennsylvania Company (and hence of the Excelsior Enterprise Company) or the stock thereof, when increased in the mode and manner described in said Act of April 7, 1870, could be in the whole common, or in part preferred stock, as the Company might from time to time determine and the Pennsylvania Company (and hence the Excelsior Enterprise Company), was authorized and empowered to issue said stock or any portion thereof in payment of any debt or liability incurred in the purchase of any property or to sell or dispose of any portion of common or preferred stock on such terms and conditions as the Company should agree upon with any party or parties, company or companies.

Thereafter and on January 18, 1873, pursuant to the power conferred by Section 9 of the Act of April 7, 1870, the name Excelsior Enterprise Company was by resolution of the Board of Directors, changed to The National Company, and thereafter by order dated December 7, 1896, of the Court of Common Pleas, No. 1, for the County of Philadelphia, September Term, 1896, No. 973, the name of The National Company was changed to Reading Company.

The Plan and Agreement of Reorganization dated December 14, 1895, authorized the Reorganization Managers thereunder, to adopt or use any existing or future companies for carrying out the same, and the Reorganization Managers employed the aforesaid Company which had become known as the Reading Company for the purposes of said reorganization and vested in said Company title to stocks and bonds of the Philadelphia and Reading Railway Company (hereinafter referred to as the Railway Company) and of the Coal Company.

Pursuant to the authority granted by the Acts afore-

said, and pursuant to the Plan and Agreement of Reorganization dated December 14, 1895, the stockholders of the Reading Company at a meeting duly held on December 18, 1896, adopted resolutions for the increase of the capital stock of the Company to the aggregate sum of \$140,000,000., divided into 2,800,000 shares of the par value of \$50. each, of which 560,000 shares of the aggregate par value of \$28,000,000. should be First Preferred Stock, 840,000 shares of the aggregate par value of \$42,000,000. should be Second Preferred Stock and the remainder, 1,400,000 shares of the aggregate par value of \$70,000,000. should be Common Stock, each share of stock being of a par value of \$50. A copy of said resolutions is attached hereto, made part hereof and marked Exhibit "A".

It was further provided in and by said resolutions that certificates for the First Preferred, Second Preferred and Common Stock of the Reading Company, should from time to time, be issued in such form as the Board of Directors should determine, and pursuant to such resolutions at a meeting of the Board of Directors of the Reading Company held December 23, 1896, the forms for the First Preferred Stock, Second Preferred Stock and Common Stock certificates were duly adopted. Copies of the forms of such certificates of stock are attached hereto, made part hereof and marked Exhibit "B".

Thereafter there were issued by the Reading Company pursuant to authority duly conferred by law and for valid consideration (and there are now outstanding), the shares of stock provided to be issued by the aforesaid resolutions, to wit: \$28,000,000. par value of First Preferred Stock; \$42,000,000. par value of Second Preferred Stock, and \$70,000,000. par value of Common Stock, and certificates representing the same were originally issued in the form set forth in Exhibit "B" hereto.

Thereafter and on September 14, 1904, the Board of Directors of the Reading Company adopted forms for

the certificates of First Preferred, Second Preferred and Common Stock of the Reading Company in conformity with the rules of the New York Stock Exchange and the Philadelphia Stock Exchange adopted since the form of the certificates (Exhibit "B" hereto) had been authorized, and copies of such new forms of certificates are attached hereto, made part hereof, and marked Exhibit "C". Thereafter only such new forms of certificates were issued as and when the old certificates were presented for transfer, and substantially all shares of the stock of the Reading Company are represented by certificates in the forms set forth in Exhibit "C".

6. Your petitioners are advised and believe, and they therefore aver, that by reason of the foregoing, the holders of the First and Second Preferred Stock of the Reading Company are entitled to non-cumulative dividends at the rate of, "*but not exceeding*" 4% in each and every fiscal year, *and no more*, and that they are entitled to said dividends in preference and priority to any payment in or for such fiscal year of any dividend on the Common Stock, but only from undivided net profits of the Company, when and as determined by the Board of Directors, and only if and when the Board shall so declare dividends therefrom, and that the Board may, after providing for the payment of "*full*" dividends as aforesaid for any fiscal year on the First and Second Preferred Stock, declare and pay *all* of the surplus undivided net profits for such year as a dividend upon the Common Stock; and that in the event that the undivided net profits of any fiscal year are greater than a sum sufficient to pay the aforesaid dividends of 4% on the First and Second Preferred Stock, the Board may at any time declare such excess (or any part remaining after the payment of such dividends as were declared upon the Common Stock) as a further dividend upon the Common Stock, and that such excess undivided net profits (or such remaining part), may

not be utilized for the declaration and payment of further dividends upon the First and Second Preferred Stock or for distribution to holders thereof, prior to the liquidation and dissolution of the Reading Company, except that no dividends may be declared and paid upon the Common Stock out of the net profits of any previous fiscal year unless and until the "full" dividends for such fiscal year, *to wit*, 4%, shall have been paid on the First and Second Preferred Stock.

7. Dividends of 4% per annum have been paid upon the First Preferred Stock at all times since the year 1900, except that for the years 1900 and 1902 only 3% was paid, and dividends of 4% per annum have been paid upon the Second Preferred Stock in each year since 1900 except that in the years 1900, 1901 and 1902 no dividends were paid thereon, and in the year 1903 only 1½% in dividends was paid thereon. No dividends were paid upon the Common Stock until 1905, when 3½% was paid thereon. Thereafter, for the years 1906 to 1909 inclusive 4% per annum was paid in dividends upon such Common Stock. For the years 1910, 1911 and 1912 6% per annum was paid thereon, and *for the years 1913 to 1920 inclusive 8% per annum was paid in dividends upon the Common Stock.*

8. Your petitioners are advised and believe and they therefore aver, that for the ten year period, 1910 to 1920, inclusive, dividends of *more than 4%* per annum have been declared and paid upon the Common Stock of the Reading Company; that such dividends were duly declared by its Board of Directors and the acts of the Board in declaring such dividends were ratified by the stockholders of the Reading Company at their annual meetings; that information with respect to the amount of dividends declared and paid upon the Common Stock was throughout this period published by the Reading Company in its annual

reports to stockholders, and knowledge of the amount of dividends paid upon such Common Stock was general throughout the community; that no protest against, criticism of or objection to the payment of such dividends was ever made by any preferred stockholder, bondholder, trustee under any mortgage, director or officer of the Reading Company, and your petitioners aver that all interests have acquiesced in the construction that the holders of the Common Stock are entitled to have declared and paid to them as dividends, the excess of undivided net profits for the fiscal year remaining, after provision had been made for the payment of "full" dividends of 4% per annum upon each of the First Preferred and Second Preferred Stock, and your petitioners further aver that the acquiescence in such construction constitutes likewise, acquiescence in the practical interpretation of the contract by all the parties concerned, that the holders of the Common Stock are entitled to have declared and paid to them as dividends, the excess undivided net profits for any fiscal year remaining, after payment of dividends upon the First and Second Preferred Stock, and upon the Common Stock, and which becomes part of the accumulated surplus of the Reading Company.

In or about the year 1905, and for all years thereafter to date, the Board of Directors of the Reading Company has set aside out of undivided profits for the particular fiscal year a sum sufficient to pay dividends of 4% in semi-annual or quarterly instalments upon the First Preferred Stock, before declaring or paying dividends upon the Second Preferred Stock and the Common Stock out of the undivided profits of such particular fiscal year; and after making such provision for dividends upon the First Preferred Stock, the Board of Directors has set aside out of the surplus earnings for such fiscal year, a sum sufficient to pay dividends of 4% per annum in semi-annual or quarterly instalments upon the Second Pre-

ferred Stock, before declaring or paying dividends upon the Common Stock of the Company out of the undivided profits of such fiscal year. After making such provision for dividends upon the First and Second Preferred Stock, the Board of Directors has declared dividends out of the remaining undivided profits for such fiscal year upon the Common Stock.

Attached hereto and made part hereof, marked "Exhibit D" is a copy of the resolutions adopted at the meeting of the Board of Directors held on December 28, 1920. Resolutions of the same character were adopted at meetings of the Board of Directors in each year since 1905. It is the practice of the Reading Company after setting aside sums sufficient to pay dividends upon the First and Second Preferred Stock, as hereinbefore set forth, from time to time to declare dividends upon the First and Second Preferred Stock out of the sums set aside as aforesaid, and there is attached hereto and made part hereof, marked "Exhibit E" an extract from the Minutes of the meeting of the Board of Directors held January 18, 1921, declaring such a dividend on the First Preferred Stock. Information with respect to the manner of declaring dividends and the setting aside of sums sufficient to make provision therefor, was published by the Reading Company in its annual reports to stockholders, and knowledge of the amount of dividends paid and the manner of providing therefor were general throughout the community, and no protest against, criticism of, or objection to, this manner of declaring and paying dividends was ever made.

9. It was provided in and by the Plan and Agreement of Reorganization dated December 14, 1895, that at any time after dividends at the rate of 4% per annum shall have been paid for two successive years on the First Preferred Stock, the Second Preferred Stock could be converted by the Reading Company, one-half into First

Preferred Stock and one-half into Common Stock, and provision was made for the increase in the amount of First Preferred Stock and Common Stock required by the exercise of such right of conversion. The resolutions creating such Second Preferred Stock ("Exhibit A" hereto), and the certificates representing such Second Preferred Stock, contain provisions for the right of the Reading Company so to convert Second Preferred Stock. All of the shares of capital stock of the Reading Company are entitled to vote, and until the aforesaid right of conversion is exercised, control of the Reading Company is equally divided between the Preferred and Common Stock (there being issued and outstanding \$70,000,000 par value of First and Second Preferred Stock and \$70,000,000 par value of Common Stock). The exercise of the aforesaid right of conversion, however, would leave outstanding \$49,000,000 par value of First Preferred Stock and \$91,000,000 par value of Common Stock and control of the management of the company would, thereupon, pass to the holders of the Common Stock.

In the resolutions creating the First Preferred Stock and Second Preferred Stock ("Exhibit A" hereto), it is provided

"But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock".

A similar provision is contained in the certificates of stock of the Reading Company (Exhibits "B and C" hereto).

No such provision appeared in the Plan and Agreement of Reorganization dated December 14, 1895, and your petitioners are advised and believe, and they therefore aver that such provision was inserted, because without it (as the dividends payable upon the Preferred Stock

were non-cumulative), the holders of the Common Stock who, upon conversion of the Second Preferred Stock, would obtain control of the management of the corporation, could refrain from declaring dividends upon the First Preferred Stock, and thus cause the undivided profits of a particular fiscal year, to become part of the accumulated surplus of the corporation, and subject at some future time to distribution among the holders of the Common Stock, to the exclusion of the holders of Preferred Stock, and your petitioners further aver that such provision was intended to make it impossible for the holders of Common Stock to profit at the expense of holders of Preferred Stock, by any exercise of control which would deprive the holders of Preferred Stock of dividends, when such action would inure to the benefit of the holders of Common Stock, and that such provision was in recognition and not in derogation of the right of the holders of Common Stock, to have the accumulated and undivided surplus of the Reading Company held subject to distribution solely among the holders of Common Stock by way of dividends.

10. As appears from the twenty-second annual report of the Reading Company for the fiscal year ended December 31, 1919, the profit and loss account of the Reading Company, upon its balance sheet as of December 31, 1919, shows a credit balance of \$33,201,149.81. Such credit balance to profit and loss, represents an accumulation of net earnings for particular fiscal years, after paying the dividends in such years. The amounts contributed to such accumulated surplus by the earnings of particular fiscal years, as appears from the annual reports of the Reading Company, are approximately as follows:

Year
ended
June 30

1897 (7 mos.)	—\$1,243,127
1898.....	1,376,420
1899.....	517,426
1900.....	577,217
1901.....	239,965
1902.....	—227,989
1903.....	1,023,248
1904.....	1,862,140
1905.....	2,181,857
1906.....	2,487,241
1907.....	2,724,153
1908.....	2,750,894
1909.....	3,342,726
1910.....	2,481,850
1911.....	1,248,963
1912.....	1,265,642
1913.....	2,227,836
1914.....	2,422,742
1915.....	143,722
1916.....	1,056,479

Year
ended
Dec. 31

1917 (18 mos.)	2,289,660
1918.....	1,809,970
1919.....	642,115

\$33,201,150

11. The Reading Company is the holder of all of the \$8,000,000 par value of the capital stock of the Coal Company, and the Coal Company is indebted to the Reading Company as appears from the balance sheet of the Reading Company as of December 31, 1919, in the sum of \$69,919,770.06. The same amount appears in the balance sheet of the Coal Company as being due to the Reading Company. Payments on account of interest have been made upon such indebtedness from time to time,

as appears from the annual reports of the Reading Company and of the Coal Company, and the amount now due to the Reading Company is the balance of an original indebtedness which has from time to time been diminished by various amounts, as likewise appears from said reports. The investment of the Reading Company with respect to the Coal Company, appears on the books of the Reading Company as of December 31, 1919, as follows:

Philadelphia & Reading Coal & Iron Company's stock	\$8,000,000.00
Due from Philadelphia & Reading Coal & Iron Company	69,918,770.06
Total	\$77,918,770.06

12. In and by the Plan dated February 14, 1921, submitted to this Honorable Court, it is provided, in Paragraph 3 thereof, that the Reading Company release the claim of approximately \$70,000,000 hereinbefore referred to, due from the Coal Company, and in Section 5 it is provided that the Coal Company be consolidated with the Delaware Coal Company, and the stock of the Consolidated Company (which stock is also hereinafter referred to as the stock of the Coal Company) be sold to the stockholders of the Reading Company for an amount equivalent to \$5,600,000; and in Section 2 of the Plan it is provided that the Coal Company pay to the Reading Company \$10,000,000 in cash or current assets at market value and \$25,000,000 in 4% Mortgage Bonds of the Coal Company. Hence your petitioners aver that in return for the investment standing upon the books of the Reading Company at \$77,919,770.06, the Reading Company is to receive the following:

Cash	\$10,000,000
Bonds	25,000,000
Cash for sale of stock	5,600,000
Total	\$40,600,000

Your petitioners aver that the result of carrying out the Plan will be to eliminate and to distribute the surplus aforesaid of \$33,201,150, representing the accumulation of net earnings of the Reading Company. As appears from the accounts of the Reading Company aforesaid, the value of the stock of the Coal Company to be distributed equally to the preferred and common stockholders upon payment of \$5,600,000 will be the difference between \$77,918,770.06 (*infra*, p. 14) and \$35,000,000, to wit, \$42,918,770.06. And your petitioners aver that the Plan, in affording holders of Preferred and Common Stock the right to purchase said stock of the Coal Company upon equal terms, violates the right of the holders of the Common Stock of the Reading Company to have said surplus, with the exceptions aforesaid, distributed solely to them, as the earnings of fiscal years to which the holders of Preferred Stock have no right, and which the Board of Directors of the Reading Company could have distributed at the close of each fiscal year solely to the holders of the Common Stock.

13. In addition to the surplus of \$33,201,150. appearing on the balance sheet of the Reading Company as of December 31, 1919, the Reading Company, through its ownership of the entire capital stock of the Coal Company, and of the entire capital stock of the Railway Company, is in equity the owner of the surpluses of the latter two companies accumulated out of net earnings of said Companies since the date when said Reading Company acquired their securities and became their sole stockholder.

14. As appears from the balance sheet in the annual report of the Coal Company for the fiscal year ending December 31, 1919, the Coal Company has a surplus of \$19,013,206, consisting of accumulated net earn-

ings of fiscal years subsequent to the year 1896, when the Reading Company acquired all the stock of the Coal Company. This also appears from the annual reports of the Coal Company, reference to which is hereby made for the details thereof; and the Reading Company would have been entitled to have such accumulated earnings represented by said surplus declared to it as a dividend, and such dividend would constitute earnings distributable to the holders of stock of the Reading Company according to their respective rights in the undistributed profits of the Reading Company as the same have been hereinabove set forth. The surplus of \$19,013,206 of the Coal Company is not reflected in the balance sheet of the Reading Company, but the Reading Company is equitably entitled to same, and if the properties of the Coal Company were sold for an amount equal to the value of its assets as they appear in the balance sheet of the Coal Company as of December 31, 1918, the sum representing said surplus and which would accrue to the Reading Company, would be a part of the surplus of the Reading Company and would be distributable in accordance with the respective rights of the holders of its Common and Preferred Stock as the same have been hereinbefore set forth.

15. The Reading Company is the owner of \$42,481,700 par value of the capital stock of the Railway Company, \$20,000,000 par value of which it acquired as the result of the reorganization aforesaid, and \$22,481,700 par value of which it acquired in return for amounts advanced to the Railway Company. The Reading Company is also the owner of \$20,000,000 principal amount of the bonds of the Railway Company. The investment of the Reading Company with respect to the Railway Company

appears in the balance sheet of the Reading Company as of December 31, 1919, as follows:

Philadelphia & Reading Railway Company's bonds	\$20,000,000
Philadelphia & Reading Railway Company's stock	42,481,700
Total	\$62,481,700

The Railway Company, as appears from its annual report for the fiscal year ending December 31, 1919, has a surplus of \$43,793,524.59, consisting of

Additions to property through income and surplus since June 30, 1907.	\$33,383,185.76
Profit and loss	10,410,338.83

As appears from the annual reports of the Railway Company, reference to which is hereby made for particulars, the said surplus represents accumulated earnings which could have been declared as dividends to the Reading Company, its sole stockholder, and by virtue of the ownership of all of the stock of the Railway Company the Reading Company is in equity entitled to the ownership of said surplus. Your petitioners aver that it would have been lawful to have made additions to property through the issuance of stock for cash, or by borrowing sums requisite therefor, and that the earnings which were employed for the acquisition of such additions to property could have been lawfully distributed to the holders of stock of the Railway Company as a dividend. Had such dividends been paid to the Reading Company the undistributed profits resulting therefrom would have been distributable to the holders of the Preferred and Common Stock of the Reading Company in accordance with their respective rights as the same have been hereinbefore set forth.

16. Your petitioners are advised and believe and they therefore aver, that if the properties of the Railway Company were sold for the price at which the properties are carried in the books of the Railway Company, and the purchase price distributed, the Reading Company, as its sole stockholder, would receive and carry the amount represented by the surplus of the Railway Company into its own surplus, which would be distributable to the holders of Preferred and Common Stock of the Reading Company in accordance with their respective rights, as the same have been hereinbefore set forth, as representing *profit* over and beyond the original investment of the Reading Company in the securities of the Railway Company.

17. Your petitioners are advised and believe, and they therefore aver, that if the accounts of the Reading Company were made to reflect the surpluses of the Coal Company and of the Railway Company, of which the Reading Company, by virtue of its ownership of all of the capital stock of such Companies, is in equity the owner, the surplus of the Reading Company would appear as follows:

Profit and Loss, Reading Company (December 31, 1919)	\$33,201,149.81
Profit and Loss Coal Company (December 31, 1919)	19,013,206.00
Additions to Property through Income—Railway Company (December 31, 1919)	33,383,185.76
Profit and Loss, Railway Company (December 31, 1919)	10,410,338.83
✓Total	<u>\$96,007,880.40</u>

Your petitioners further aver that if the Plan dated February 14, 1921, were carried out, the result thereof would be to diminish the aforesaid surplus by the sum of \$37,318,770.06 (*infra*, p. 14, to wit, \$77,918,770.06 less

\$40,600,000), and to distribute such sum equally to holders of Preferred and Common stock of the Reading Company, whereas in truth and in fact the holders of Common Stock of the Reading Company are entitled to all the benefits of or pertaining to said surplus with the exceptions hereinbefore set forth.

18. Your petitioners are advised that it is contended that the Reading Company can offset the loss of \$37,318,770.06 aforesaid arising out of the disposition of its interest in the Coal Company, by the surplus of \$43,793,524.59 of the Railway Company, acquired by merger of the Reading Company with the Railway Company, but your petitioners are advised and believe and therefore aver that the acquisition by the Reading Company of the surplus of the Railway Company will not be the acquisition of a new asset, but is property to which the holders of the Common Stock of the Reading Company are now equitably entitled. Such surplus will increase the surplus of the Reading Company, if said merger of the Reading Company with the Railway Company is effectuated prior to the distribution of the stock of the Coal Company. If the distribution of the stock of the Coal Company takes place prior to said merger, then the existing surplus of the Reading Company of \$33,201,150. will have been dissipated and a distribution of said surplus as hereinbefore set forth will in effect have been made equally to Preferred and Common Stockholders, *in violation* of the rights of the holders of the Common Stock.

Your petitioners are advised that it may be contended that the \$8,000,000 of stock of the Coal Company, after the release of the indebtedness of \$69,918,770.06 to the Reading Company and the payment to the Reading Company of \$10,000,000 in cash or current assets at market value, and \$25,000,000 principal amount of

bonds, will not be worth the sum of approximately \$42,918,770.06 as hereinbefore set forth.

Your petitioners aver that the stockholders of the Reading Company have little or no accurate information as to the value of the assets of the Coal Company, and no information has been published by the Reading Company or the Coal Company from which the value of such assets may be correctly ascertained. Your petitioners are advised and believe, and they therefore aver that all interests will best be served by having an appraisal made of the properties of the Coal Company to the end that reliable information may be obtained as to the value thereof, and that this Court may then determine the manner and mode of and rights in the distribution of the surplus of the Reading Company as represented by the interests of the Reading Company in the assets of the Coal Company.

19. It is further provided in and by the Plan dated February 14, 1921, in Paragraphs 4 and 5 thereof, that the properties of the Coal Company and its \$8,000,000 par value of capital stock, shall be released from the lien of the General Mortgage and the Coal Company shall be discharged from liability on the General Mortgage Bonds, and that to accomplish such result a *premium* of not exceeding 10% upon the principal amount of the outstanding General Mortgage Bonds be paid to the holders thereof by the Reading Company. To that end, it is provided that a Committee be organized to act in the interest of the bondholders, which said Committee shall call for the deposit of bonds, and which Committee shall be authorized by the depositors to carry out the operation in their behalf. Your petitioners are advised and believe, and they therefore aver, that the carrying out of such operation will involve an expenditure of approximately \$10,000,000 by the Reading Company; that the indebtedness of the Reading Company upon such General Mort-

gage Bonds will not be diminished by such payment, but that the Reading Company will still remain indebted in the same amount as at present to the holders of General Mortgage Bonds, who have ample security for the payment of such amount, even if the properties of the Coal Company and its capital stock shall have been released from the lien of said General Mortgage.

20. Your petitioners are advised and believe, and they therefore aver, that a segregation of the coal and railway properties of the Reading Company, pursuant to the Decree of Mandate entered herein, can be effected without prejudice to the rights of the United States of America, by permitting the General Mortgage to remain undisturbed and by providing for the making of such agreements with the Trustee under said General Mortgage as will render impossible any common control of the coal and railway properties, and your petitioners are advised and believe, and they therefore aver, that such plan can be effected without requiring the release of any property from the lien of said General Mortgage. Your petitioners aver that such result will be effectuated if an agreement is entered into with the Trustee of the General Mortgage which shall provide that in the event of default thereunder, separate receivers of the coal and railway properties (or their securities) be appointed if the Trustee should exercise its rights in that behalf; that the operation of such receivers shall be independent, that in the event that a sale be made of the properties of the Coal Company and the Railway Company (or their securities), separate sales be had thereof, to independent purchasers free from common domination and control; and that in the event the Trustee shall exercise any other powers under the General Mortgage, vesting it with the right to operate the properties of the Coal Company and of the Reading Company or to control their securities, such operation

or control shall provide for independent management and freedom from any community or identity of interests.

Your petitioners further aver that in order to carry out the segregation directed by the Decree of Mandate herein, the capital stock of the Coal Company need not be released from the General Mortgage. The General Mortgage provides that the Trustee thereunder promises to execute to the Reading Company, upon demand, proxies to vote the capital stock of the Coal Company, and this Honorable Court in order that said stock may be voted by persons free from domination or control of the Reading Company or the Railway Company may in a manner to be determined by this Honorable Court direct that the Reading Company shall instruct or empower the Trustee irrevocably to issue proxies from time to time to (a) persons designated or approved by this Honorable Court to exercise independent control of the Coal Company pending the acquisition of control by holders of Certificates of Interest, and (b) holders of Certificates of Interest in the capital stock of the Coal Company who shall at the time of applying for such proxies make affidavit that for such period as the Court shall direct, they have not been holders of capital stock of the Reading Company, and in order that such segregation may be complete this Honorable Court may require the Reading Company to adopt a by-law that it will register no transfers of shares of stock of the Reading Company into the names of persons who shall not make affidavit that they have not for such period as the Court shall direct, been holders of proxies to vote shares of stock of the Coal Company.

21. Your petitioners are advised and believe and they therefore aver that as the Reading Company is now the holder of the equity of redemption in the capital stock of the Coal Company held by the Trustee under the General Mortgage, this Honorable Court may direct that the

Reading Company shall assign such equity of redemption to its stockholders who shall receive Certificates of Interest in said stock which shall entitle the holder thereof to the dividends upon said stock and to a proxy to vote the same when he shall make the affidavit hereinabove set forth.

22. Your petitioners are advised and believe, and they therefore aver that arrangements can be made between the Reading Company and the Coal Company similar to those proposed in the Plan dated February 14, 1921, which will not require the release of any property from the lien of said General Mortgage. The Reading Company and the Coal Company may agree that the Coal Company shall pay to the Reading Company \$10,000,000. in cash or assets at current market value, and that the Coal Company shall obligate itself to pay principal and interest with respect to \$25,000,000. principal amount of General Mortgage Bonds, the Reading Company agreeing to hold the Coal Company and its properties harmless from any liability upon such General Mortgage Bonds or under the General Mortgage so long as the Coal Company shall meet such obligation under the agreement, the Coal Company to secure the Reading Company against any payments which the latter company may be compelled to make because of the default of the Coal Company under the agreement, or in lieu thereof it can be provided in the event of default of the Coal Company under the agreement aforesaid, that the Trustee under the General Mortgage shall at the request of the Reading Company proceed to a sale of the properties of the Coal Company to an independent purchaser approved by this Honorable Court and hold the proceeds under the provisions of the General Mortgage. With respect to the provisions of Section 10 of Article 2 of the General Mortgage, providing for a specified sinking fund equal to five cents per ton on coal mined, the Reading Company and the Coal Company may agree that

such sinking fund shall be paid by the Coal Company, and that there be applied against the obligation of the Coal Company to pay principal and interest with respect to \$25,000,000. principal amount of General Mortgage Bonds, the principal amount of General Mortgage Bonds purchased with such sinking fund, so that the Coal Company, by paying such sinking fund, will be relieved from paying principal and interest with respect to an amount of bonds equivalent to the amount purchased with such sinking fund.

23. Your petitioners beg leave to present the following suggestions for modifications of the Plan submitted to this Honorable Court:

I. The General Mortgage 4% Bonds and the General Mortgage under which they are issued shall remain undisturbed, except that provision shall be made under an agreement with the Trustee under said General Mortgage for separate receiverships of the coal properties and the railway properties (or their securities) in the event of default under the General Mortgage, and separate sales of the coal properties and the railway properties (or their securities) to independent purchasers, and in the event that the Trustee shall exercise the right to operate the properties or control the securities of the Coal Company and the Railway Company under any of the powers conferred upon it by the General Mortgage, such operation or control shall provide for independent management of the coal and railway properties (or their securities).

II. The Reading Company shall in a manner to be determined by this Honorable Court instruct or empower the Trustee under said General Mortgage irrevocably to issue proxies from time to time to vote the capital stock of the Coal Company to (a) persons designated or approved by this Honorable Court to exercise independent control of the Coal Company, pending the acquisition of control by holders of Certificates of Interest and (b) hold-

ers of Certificates of Interest in the capital stock of the Coal Company who shall, at the time of applying for such proxies, make affidavit for such period as the Court shall direct that they have not been holders of the capital stock of the Reading Company, and the Reading Company shall adopt a by-law that it will register no transfers of shares of stock of the Reading Company into the names of persons who shall not make affidavit that they have not for such period as the Court shall direct been holders of proxies to vote shares of stock of the Coal Company.

III. The Coal Company shall pay to the Reading Company \$10,000,000 in cash or assets at current market values and agree to pay principal and interest with respect to \$25,000,000 principal amount of General Mortgage Bonds, the Reading Company agreeing to hold the Coal Company and its properties harmless from any liability upon such General Mortgage so long as the Coal Company shall meet such obligation under the agreement, and the Coal Company shall secure the Reading Company for any payments which the latter Company may be compelled to make because of the default of the Coal Company under the agreement, or in lieu thereof it shall be provided that in the event of the default of the Coal Company under the agreement aforesaid, the Trustee under the General Mortgage shall, at the request of the Reading Company, proceed to a sale of the properties of the Coal Company to an independent purchaser approved by this Honorable Court. With respect to the provisions of Section 10 of Article 2 of the General Mortgage, providing for a specified sinking fund equal to five cents per ton on coal mined, the Reading Company and the Coal Company shall agree that such sinking fund shall be paid by the Coal Company, and that there be applied against the obligation of the Coal Company to pay principal and interest with respect to \$25,000,000 principal amount of General Mortgage Bonds, the principal amount of the General Mortgage Bonds purchased with such sinking fund, so that the Coal Company, by

paying such sinking fund, will be relieved from paying principal and interest with respect to an amount of bonds equivalent to the amount purchased with such sinking fund.

IV. The Reading Company shall assign its equity of redemption in the capital stock of the Coal Company and issue Certificates of Interest which will entitle the holder thereof to the earnings of said capital stock and its other rights and the right to vote the same when the required affidavit is made, such Certificates of Interest to be distributed to the present holders of the Capital Stock of the Reading Company upon equal terms, to the holders of Preferred and Common Stock, *only* in the event that this Honorable Court shall determine that holders of Preferred and Common Stock are entitled to equal distribution out of the accumulated surplus of the Reading Company. In the event, however, that this Honorable Court shall determine that the holders of Common Stock are, with the exceptions hereinbefore set forth, entitled to the accumulated surplus, an appraisal shall be had of the properties of the Coal Company and the value of the capital stock of the Coal Company determined, to the end that this Honorable Court may determine how much of the capital stock of the Coal Company, if any, shall be distributed in return for original capital of the Reading Company (in which event the capital stock of the Reading Company shall be reduced by that amount), and how much shall be distributed out of accumulated surplus, and this Honorable Court shall thereupon direct a distribution of Certificates of Interest to holders of the capital stock of the Reading Company on the basis thus determined.

WHEREFORE your petitioners respectfully pray that leave of this Honorable Court be granted them to intervene herein and that in the event this Honorable Court shall extend such leave to your petitioners, that this

petition stand as their petition of intervention, and that this Honorable Court modify the Plan dated February 14, 1921, now before it, in the manner hereinbefore suggested, or in such other manner as to this Honorable Court upon hearing and consideration shall seem just and equitable.

And your petitioners will ever pray, etc.

CONTINENTAL INSURANCE COMPANY,

by

HENRY EVANS,

Chairman of the Board of Directors.

FIDELITY-PHENIX FIRE INSURANCE COM-
PANY OF NEW YORK,

by

HENRY EVANS,

Chairman of the Board of Directors.

ALFRED A. COOK,

Solicitor for Petitioners,

Trinity Building,

New York City.

ALFRED A. COOK,

F. F. GREENMAN,

Of Counsel.

UNITED STATES OF AMERICA,
 Southern District of New York, } ss.:
 County and State of New York, }

HENRY EVANS being duly sworn, deposes and says, that he is the Chairman of the Board of Directors of Continental Insurance Company and Chairman of the Board of Directors of Fidelity-Phenix Fire Insurance Company of New York, the petitioners named in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and the same is true to his best knowledge, information and belief.

Sworn to before me this }
 March 12, 1921. }

HENRY EVANS.

FREDERICK G. BROWN,
 Notary Public, Kings County
 Certificate filed in New York County

[SEAL]

Exhibit A.

"RESOLVED, That the capital stock of the Reading Company be and it is hereby increased to the aggregate sum of \$140,000,000, divided into 2,800,000 shares, of the par value of \$50 each; of which 560,000 shares of the aggregate par value of \$28,000,000 shall be First Preferred Stock, and 840,000, of the aggregate par value of \$42,000,000 shall be Second Preferred Stock; and the remainder, 1,400,000 shares, of the aggregate par value of \$70,000,000 shall be Common Stock; and that the preferences of the First Preferred Stock, and of the Second Preferred Stock, shall be severally and respectively as follows:

"The First Preferred Stock is entitled to non-cumulative dividends at the rate of, but not exceeding, four

per cent per annum, in each and every fiscal year, in preference and priority to any payment in or for such fiscal year of any dividend on other stock; but only from undivided net profits of the Company when and as determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom. If, after providing for the payment of full dividends for any fiscal year on the First Preferred Stock, there shall remain any surplus undivided net profits, the Board out of such surplus may declare and pay dividends for such year upon the Second Preferred Stock. If, from the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

"Such First Preferred Stock is authorized to the amount of Twenty-eight million dollars, and the consent of the holders of a majority of the whole amount of such First Preferred Stock then outstanding, given at a meeting of the Stockholders called for that purpose, is necessary to any increase of such authorized amount thereof as well as to the creation of any mortgage additional to that for \$135,000,000 hereafter to be issued to acquire certain assets, real, personal and mixed, from Messrs. Coster and Stetson; except that, at any time after dividends at the rate of four per cent per annum shall have been paid thereon for two successive years, said First Preferred Stock may be increased, without such consent,

to the extent of 420,000 shares for use towards the conversion of the Second Preferred Stock; and, accordingly this certificate is issued and accepted upon condition that, without further consent from the holder or owner hereof, the Reading Company may so increase and issue its First Preferred Stock.

"The Reading Company shall have the right at any time to redeem either or both classes of its Preferred Stock, at par in cash, if such redemption shall then be allowed by law.

"The Second Preferred Stock is entitled to non-cumulative dividends at the rate of, but not exceeding, four per cent per annum, in each and every fiscal year, in preference and priority to any payment in or for such fiscal year of any dividend on the Common Stock; but only from undivided net profits of the Company remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

"Such Second Preferred Stock is authorized to the amount of Forty-two million dollars, and, except as hereinafter stated, the consent of the holders of a majority of the whole amount of such Second Preferred Stock then outstanding, given at a meeting of the stockholders called for that purpose, is necessary to any increase of such authorized amount thereof, or of the First Preferred Stock, as well as to the creation of any mortgage addi-

tional to the mortgage of \$135,000,000 hereinbefore referred to.

"The Reading Company reserves the right, and this certificate is issued and accepted upon condition that at any time after dividends at the rate of 4 per cent per annum shall have been paid for two successive years on the First Preferred Stock, the Reading Company, without further consent from the holder or owners hereof, may exercise the right to convert the Second Preferred Stock, not exceeding \$42,000,000 at par, one half into First Preferred Stock and one half into Common Stock, and accordingly may so increase and issue its First Preferred Stock and its Common Stock to provide for such conversion of the Second Preferred Stock.

"The Reading Company shall have the right at any time to redeem either or both classes of its Preferred Stock, at par in cash, if such redemption shall then be allowed by law.

The Second Preferred Stock is subject to the prior rights of holders of First Preferred Stock at any time outstanding according to the preferences thereof.

"Resolved, That when and as provided and reserved in the preferences of the First Preferred Stock and Second Preferred Stock, respectively, the Second Preferred Stock, to the aggregate par value not exceeding \$42,000,000, may be converted, one half into First Preferred Stock and one half into Common Stock, and that for that purpose the Reading Company may so increase and issue its First Preferred Stock and its Common Stock.

"Resolved, That the certificates for such First Preferred, Second Preferred and Common Stock of this Company shall from time to time be issued in such form as the Board of Directors may determine.

(Copy of resolution adopted at a special meeting of the stockholders of Reading Company held December 18, 1896.)"

Exhibit B.

TOTAL PRESENT ISSUE OF FIRST PREFERRED STOCK,
\$28,000,000.

No. Shares.

READING COMPANY.

First Preferred Stock. Shares \$50. Each.

THIS IS TO CERTIFY, that
is the owner of fully-paid and
non-assessable shares, of the par value of Fifty Dollars
each, of the FIRST PREFERRED CAPITAL STOCK of the
READING COMPANY, transferable only in person, or by
attorney, on the books of the Company in New York
upon surrender of this certificate.

The First Preferred Stock is entitled to non-cumulative dividends at the rate of, but not exceeding, four per cent. per annum, in each and every fiscal year, in preference and priority to any payment in or for such fiscal year of any dividends on other stock; but only from undivided net profits of the Company when and as determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom. If, after providing for the payment of full dividends for any fiscal year on the First Preferred Stock, there shall remain any surplus undivided net profits, the Board out of such surplus may declare and pay dividends for such year upon the Second Preferred Stock. If, from the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

Such First Preferred Stock is authorized to the amount of twenty-eight million dollars, and the consent of the holders of a majority of the whole amount of such First Preferred Stock then outstanding, given at a meeting of the stockholders called for that purpose, is necessary to any increase of such authorized amount thereof, as well as to the creation of any mortgage additional to that for \$135,000,000 heretofore authorized, except that, at any time after dividends at the rate of four per cent. per annum shall have been paid thereon for two successive years, said First Preferred Stock may be increased: without such consent, to the extent of 420,000 shares for use towards the conversion of the Second Preferred Stock; and, accordingly, this certificate is issued and accepted upon condition that, without further consent from the holder or owner hereof, the Reading Company may so increase and issue its First Preferred Stock.

The Reading Company shall have the right at any time to redeem either or both classes of its Preferred Stock, at par in cash, if such redemption shall then be allowed by law.

This certificate shall not be valid until signed by the President, or one of the Vice-Presidents, and the Secretary, or Assistant Secretary, of the Reading Company, nor until registered by the Registrar of Transfers in New York.

This certificate may be exchanged, in such manner as the Company may prescribe, for a similar certificate similarly signed, but registered by the Registrar of Transfers of the Company in Philadelphia.

ENTERED

.....
Transfer Agent

Registered in New York.
CENTRAL TRUST COMPANY
OF NEW YORK,
Registrar of Transfers.

By

.....

IN WITNESS WHEREOF, The
said Company has caused
this certificate to be
signed, and the corporate
seal to be affixed hereto,
this day of 1

.....
President.

.....
Secretary.

TOTAL PRESENT ISSUE OF SECOND PREFERRED STOCK,
\$42,000,000.

No. Shares

READING COMPANY

Second Preferred Stock. Shares, \$50. Each.

THIS IS TO CERTIFY, That

is the owner of fully paid
and non-assessable shares, of the par value of Fifty
Dollars each, in the SECOND PREFERRED CAPITAL STOCK
of the READING COMPANY, transferable only in person, or
by attorney, on the books of the Company in New York
upon surrender of this certificate.

The Second Preferred Stock is entitled to non-cumulative dividends at the rate of, but not exceeding, four per cent. per annum, in each and every fiscal year, in preference and priority to any payment in or for such fiscal year of any dividend on the Common Stock: but only from undivided net profits of the Company remaining after providing for the payment of the full dividends for such fiscal year on the First Preferred Stock, when and as such undivided net profits shall have been determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom. If, from the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

Such Second Preferred Stock is authorized to the amount of forty-two million dollars; and, except as hereinafter stated, the consent of the holders of a majority of the whole amount of such Second Preferred Stock then outstanding, given at a meeting of the stockholders called for that purpose, is necessary to any increase of such authorized amount thereof, or of the First Preferred

Stock, as well as to the creation of any mortgage additional to the mortgage of \$135,000,000 heretofore authorized.

The Reading Company reserves the right, and this certificate is issued and accepted upon condition that at any time after dividends at the rate of four per cent. per annum shall have been paid for two successive years on the First Preferred Stock, the Reading Company, without further consent from the holder or owner hereof, may exercise the right to convert the Second Preferred Stock, not exceeding \$42,000,000. at par, one half into First Preferred Stock and one half into Common Stock, and accordingly may so increase and issue its First Preferred Stock and its Common Stock to provide for such conversion of the Second Preferred Stock.

The Reading Company shall have the right at any time to redeem either or both classes of its Preferred Stock, at par in cash, if such redemption shall then be allowed by law.

The Second Preferred Stock is subject to the prior rights of holders of First Preferred Stock at any time outstanding, according to the preferences thereof.

This certificate shall not be valid until signed by the President, or one of the Vice-Presidents, and the Secretary, or Assistant Secretary, of the Reading Company, nor until registered by the Registrar of Transfers in New York.

This certificate may be exchanged, in such manner as the Company may prescribe, for a similar certificate similarly signed, but registered by the Registrar of Transfers of the Company in Philadelphia.

ENTERED

.....
Transfer Agent

Registered in New York.
CENTRAL TRUST COMPANY
OF NEW YORK,
Registrar of Transfers.

By
.....

IN WITNESS WHEREOF, The
said Company has caused
this certificate to be
signed and the corporate
seal to be affixed hereto,
this day of 1

.....
President.

.....
Secretary.

TOTAL PRESENT ISSUE OF COMMON STOCK, \$70,000,000.

No. Shares.

READING COMPANY.

Common Stock. Shares \$50 each.

THIS IS TO CERTIFY, That
is the owner of fully paid
non-assessable shares, of the par value of Fifty Dollars
each, in the COMMON CAPITAL STOCK of the READING
COMPANY, transferable only in person, or by attorney, on
the books of the Company in New York upon surrender
of this certificate.

First Preferred Stock has been authorized to the
amount of twenty-eight million dollars, and Second Preferred
Stock to the amount of forty-two million dollars;
and a Mortgage has been authorized to the amount of
\$135,000,000., and the consent of the holders of at least
a majority of such part of the Common Stock as shall
be represented at a meeting of stockholders called for
that purpose is necessary to any increase of such author-
ized amount of First Preferred Stock or Second Preferred
Stock, as well as to the creation of any additional mort-
gage; *provided*, that without further consent, at any time
after dividends at the rate of four per cent. per annum
shall have been paid on the First Preferred Stock for
two successive years, the Second Preferred Stock, not
exceeding \$42,000,000., may be converted at par, one half
into First Preferred Stock and one half into Common
Stock, and that for such purchase and to such extent
the Reading Company may increase and issue its First
Preferred Stock and its Common Stock.

The Reading Company shall have the right at any time
to redeem either or both classes of its Preferred Stock, at
par in cash, if such redemption shall then be allowed by
law. The Common Stock is subject to the prior rights of
holders of all classes of Preferred Stock at any time out-
standing, according to the preferences thereof.

If, from the business of any particular fiscal year, ex-
cluding undivided net profits remaining from previous
years, after providing out of the net profits of such par-
ticular year for the payment of the full dividends for
such fiscal year on the First and Second Preferred Stock,

there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

This certificate shall not be valid until signed by the President, or one of the Vice-Presidents, and the Secretary, or Assistant Secretary, of the Reading Company, nor until registered by the Registrar of Transfers in New York.

This certificate may be exchanged, in such manner as the Company may prescribe, for a similar certificate similarly signed, but registered by the Registrar of Transfers of the Company in Philadelphia.

ENTERED:

.....
Transfer Agent.

Registered in New York.
CENTRAL TRUST COMPANY
OF NEW YORK,
Registrar of Transfers,

By

.....

IN WITNESS WHEREOF, The
said Company has caused
this certificate to be
signed, and the corporate
seal to be affixed hereto,
this day of 1

.....
President.

.....
Secretary.

Exhibit C

100 SHARES	FIRST PREFERRED STOCK	100 SHARES
NUMBER		SHARES 100

READING COMPANY

TOTAL PRESENT ISSUE OF FIRST PREFERRED STOCK
\$28,000,000.

THIS IS TO CERTIFY that

....the owner of ONE HUNDRED fully paid and non-assessable shares of the par value of FIFTY DOLLARS each of the FIRST PREFERRED CAPITAL STOCK of the READING COMPANY, transferable only in person, or by attorney, on the books of the Company in Philadelphia or New York upon surrender of this certificate. The First Preferred Stock is entitled to non-cumulative dividends at the rate of, but not exceeding four per cent per annum in each and every fiscal year, in preference and priority to any payment in or for such fiscal year of any dividend on other stock; but only from undivided net profits of the Company when and as determined by the Board of Directors and only if and when the Board shall declare dividends therefrom. If after providing for the payment of full dividends for any fiscal year on the First Preferred Stock there shall remain any surplus undivided net profits, the Board out of such surplus may declare and pay dividends for such year upon the Second Preferred Stock. If from the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

Such First Preferred Stock is authorized to the amount of twenty-eight million dollars, and the consent of the holders of a majority of the whole amount of such First Preferred Stock then outstanding given at a meeting of the stockholders called for that purpose, is necessary to any increase of such authorized amount thereof as well as to the creation of any mortgage additional to that for \$135,000,000. heretofore authorized, except that at any time after dividends at the rate of four per cent per annum shall have been paid thereon for two successive years, said First Preferred Stock may be increased without such consent to the extent of 420,000 shares for use towards the conversion of the Second Preferred Stock; and, accordingly, this certificate is issued and accepted upon condition that, without further consent from the holder or owner hereof, the Reading Company may increase and issue its First Preferred Stock. The Reading Company shall have the right at any time to redeem either or both classes of its Preferred Stock, at par in cash, if such redemption shall then be allowed by law. This certificate shall not be valid until signed by the President, or one of the Vice-Presidents, and the Secretary or Assistant Secretary of the Reading Company, nor until registered by the Registrar of Transfers in Philadelphia or New York. This certificate is transferable either in Philadelphia or New York.

ENTERED

Transfer Agent.

Registered in Philadelphia,
PENNSYLVANIA COMPANY
FOR INSURANCES, ON
LIVES AND GRANTING
ANNUITIES,

Registrar of Transfers.

By

.....

Registrar.

SHARES \$50 EACH.

(on face)

FIRST PREFERRED.

IN WITNESS WHEREOF, the
said Company has caused
this certificate to be
signed and the corporate
seal to be affixed hereto,
this day of .

.....

Vice-President.

.....

Assistant Secretary.

—

SECOND PREFERRED STOCK

100		100
SHARES		SHARES
	NUMBER	SHARES
		100

READING COMPANY

TOTAL PRESENT ISSUE OF SECOND PREFERRED STOCK,
\$42,000,000.

THIS IS TO CERTIFY that

....the owner of ONE HUNDRED fully paid and non-assessable shares, of the par value of FIFTY DOLLARS each, in the SECOND PREFERRED CAPITAL STOCK of the READING COMPANY, transferable only in person or by attorney, on the books of the Company in Philadelphia or New York upon surrender of this certificate. The Second Preferred Stock is entitled to non-cumulative dividends, at the rate of, but not exceeding, four per cent per annum, in each and every fiscal year in preference and priority to any payment in or for such fiscal year of any dividend on the Common Stock; but only from undivided net profits of the Company remaining after providing for the payment of the full dividends for such fiscal year on the First Preferred Stock, when and as such undivided net profits shall have been determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom. If, from the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock. Such Second Preferred Stock is authorized to the amount of forty-two million dollars; and, except as hereinafter stated, the consent of the holders of a majority of the whole amount of such Second Preferred Stock then outstanding, given at a meeting of the stockholders called for that purpose, is necessary to any increase of such au-

thorized amount thereof or of the First Preferred Stock, as well as to the creation of any mortgage additional to the mortgage of \$135,000,000. heretofore authorized. The Reading Company reserves the right, and this certificate is issued and accepted upon condition that at any time after dividends at the rate of four per cent per annum shall have been paid for two successive years on the First Preferred Stock, the Reading Company without further consent from the holder or owner hereof, may exercise the right to convert the Second Preferred Stock, not exceeding \$42,000,000. at par, one half into First Preferred Stock and one half into Common Stock, and accordingly may so increase and issue its First Preferred Stock and its Common Stock to provide for such conversion of the Second Preferred Stock. The Reading Company shall have the right at any time to redeem either or both classes of its Preferred Stock, at par in cash, if such redemption shall then be allowed by law. The Second Preferred Stock is subject to the prior rights of holders of First Preferred Stock at any time outstanding according to the preferences thereof. This certificate shall not be valid until signed by the President or one of the Vice-Presidents, and the Secretary or Assistant Secretary of the Reading Company, nor until registered by the Registrar of Transfers in Philadelphia or New York. This certificate is transferable either in Philadelphia or New York.

ENTERED

Transfer Agent.

Registered in Philadelphia,
PENNSYLVANIA COMPANY
FOR INSURANCES, ON
LIVES AND GRANTING
ANNUITIES,

Registrar of Transfers.
By

.....
Registrar.

SHARES \$50 EACH.
(on face)
SECOND PREFERRED.

IN WITNESS WHEREOF, the
said Company has caused
this certificate to be
signed and the corporate
seal to be affixed hereto,
this day of

.....
Vice-President.

.....
Asst. Secretary.

COMMON STOCK.

100			100
SHARES			SHARES
	NUMBER	SHARES	
		100	

READING COMPANY

TOTAL PRESENT ISSUE OF COMMON STOCK \$70,000,000.

THIS IS TO CERTIFY that

. . . the owner of ONE HUNDRED fully paid and non-assessable shares, of the par value of FIFTY DOLLARS each, in the COMMON CAPITAL STOCK of the READING COMPANY, transferable only in person or by attorney, on the books of the Company in Philadelphia or New York upon surrender of this certificate. First Preferred Stock has been authorized to the amount of twenty-eight million dollars, and Second Preferred Stock to the amount of forty-two million dollars; and a Mortgage has been authorized to the amount of \$135,000,000., and the consent of the holders of at least a majority of such part of the Common Stock as shall be represented at a meeting of stockholders called for that purpose is necessary to any increase of such authorized amount of First Preferred Stock or Second Preferred Stock, as well as to the creation of any additional mortgage; provided, that without further consent at any time after dividends at the rate of four per cent per annum shall have been paid on the First Preferred Stock for two successive years, the Second Preferred Stock, not exceeding \$42,000,000. may be converted at par, one half into First Preferred Stock and one half into Common Stock and that for such purpose and to such extent the Reading Company may increase and issue its First Preferred Stock and its Common Stock. The Reading Company shall have the right at any time to redeem either or both classes of its Preferred Stock, at par in cash, if such redemption shall then be allowed by law. The Common Stock is subject to the prior rights of holders of all classes of Preferred Stock at any time outstanding, according to the preferences thereof. If from the business of any particular

fiscal year, excluding undivided net profits remaining from previous years after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock; this certificate shall not be valid until signed by the President or one of the Vice-Presidents, and the Secretary or Assistant Secretary of the Reading Company nor until countersigned by the Transfer Agent and the Registrar.

This certificate is transferable either in Philadelphia or New York.

COUNTERSIGNED

Transfer Agent.

Registered

PENNSYLVANIA COMPANY
FOR INSURANCES, ON
LIVES AND GRANTING
ANNUITIES,

Registrar.

By

.....
Registrar.

SHARES \$50 EACH
(on face)
COMMON STOCK

IN WITNESS WHEREOF, The
said Company has caused
this certificate to be
signed and the corporate
seal to be affixed hereto,
this day of .

.....
Vice-President.

.....
Asst. Secretary.

Exhibit D.

EXTRACT FROM MINUTES OF MEETING OF BOARD OF
DIRECTORS OF READING COMPANY HELD DEC. 8, 1920.

"On motion, duly seconded, the following minute was adopted:

"Resolved, that the sum of \$1,120,000 of the surplus earnings for the fiscal year ending December 31, 1920, be and is hereby set apart to make provision for the following dividends upon the First Preferred Stock of this Company:

1% payable March 10, 1921, to stockholders of record at the close of business on February 18, 1921.

1% payable June 9, 1921, to stockholder of record at the close of business on May 24, 1921.

1% payable September 8, 1921, to stockholder of record at the close of business on August 23, 1921.

1% payable December 8, 1921, to stockholder of record at the close of business on November 22, 1921.

"WHEREAS, provision has been made for the payment from the earnings for the fiscal year ending December 31, 1920, of full dividends on the First Preferred Stock of the Company; therefore,

"Resolved, that a dividend of one per cent. be and is hereby declared upon the Second Preferred Stock of this Company, payable January 13, 1921, to stockholders of record at the close of business on December 23, 1920.

"Resolved, that the sum of \$1,260,000 of the undivided net profits of the Company for the fiscal year ending December 31, 1920, be and is hereby set apart to make provision for the following additional dividends upon the Second Preferred Stock of this Company:

1% payable April 14, 1921, to stockholders of record at the close of business on March 28, 1921.

1% payable July 14, 1921, to stockholders of record at the close of business on June 27, 1921.

1% payable October 13, 1921, to stockholders of record at the close of business on September 27, 1921.

"WHEREAS, after providing out of the net profits of the fiscal year ending December 31, 1920, for the payment of full dividends from the earnings for that fiscal year on the First Preferred and Second Preferred Stocks of the Company, there remain surplus net profits of said year; therefore,

"Resolved, that a dividend of two per cent. be and is hereby declared upon the Common Stock of the Company out of the remaining surplus net profits of the Company for the fiscal year ending December 31, 1920, payable on February 10, 1921, to stockholders of record at the close of business on January 18, 1921."

Exhibit E.

EXTRACT FROM MINUTES OF MEETING OF BOARD OF
DIRECTORS OF READING COMPANY HELD JANUARY 18,
1921.

"On motion, duly seconded, the following minute was adopted:

"WHEREAS, by a resolution adopted by the Board of Directors on December 8, 1920, the sum of \$280,000 of the undivided net profits of the Company for the fiscal year ended December 31, 1920, was set apart to make provision for a dividend of one per cent, upon the First Preferred Stock of this Company, payable on March 10, 1921, to stockholders of record at the close of business on February 18, 1921; therefore

"Resolved, that a dividend of one per cent. be and the same is hereby declared upon the First Preferred Stock of this Company, payable out of the net profits of the Company for the fiscal year ended December 31, 1920, on March 10, 1921, to the stockholders of record at the close of business on February 18, 1921."

**Petition of Seward Prosser, Mortimer N. Buckner and John H. Mason
as a Committee for Leave to Intervene on Behalf of Certain
Common Stockholders, and Suggesting Modification of Plan of
Dissolution.**

(Filed March 15, 1921.)

**TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT
OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF
PENNSYLVANIA.**

Now come your petitioners SEWARD PROSSER, MORTIMER N. BUCKNER and JOHN H. MASON, as a Committee formed at the request of certain holders of common stock of the defendant Reading Company, and respectfully represent unto this Court as follows:

I. That decree on mandate from the Supreme Court was entered herein by this Court and filed October 8, 1920, providing, among other provisions, for the submission to this Court of a plan for the dissolution of the unlawful combination between the defendants Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey and The Lehigh & Wilkes-Barre Coal Company, existing and maintained through the Reading Company, with such provision for the disposition of the shares of stock and bonds and other properties of the various Companies held by the Reading Company as may be necessary to establish the entire independence from that Company and from each other of said four defendants other than the Reading Company, to the end that the affairs of all such defendant companies may be conducted in harmony with the law.

That on information and belief, thereafter and on February 14, 1921, a plan was submitted to this Court by said defendants Reading Company, Philadelphia & Reading Railway Company and The Philadelphia & Reading

Coal & Iron Company, providing in part for the carrying out of such decree in the aforesaid particulars, and that thereafter the United States of America presented a counter-proposal and that this Court thereupon entered an order requiring said plan and such counter-proposal of the United States of America to be served upon certain parties in interest other than your petitioners or any common stockholders, and that copies of said plan and counter-proposal be filed in the office of the Clerk of this Court and with the Secretary of the defendant Reading Company, there to be open to the inspection of all stockholders of said defendant companies, and that on March 1, 1921, the Attorney General of the United States and counsel for the defendants should appear to be heard further on said proposed plan and in regard to the subject matter thereof.

II. That thereafter under date of February 14, 1921, defendant Reading Company, by order of its Board of Directors, caused to be sent to its stockholders a notice of the submission of such plan, with the enclosure of a copy thereof and of said counter-proposal and of said order, which notice stated that said Board of Directors believed said plan involved a minimum disturbance of existing securities and permitted the stockholders of the Reading Company, preferred and common, to have an opportunity to participate ratably in the purchase of the Coal Company stock, retaining their interest unaltered in the remaining properties.

III. That your petitioners are a Committee formed at the request of certain holders of the common stock of said defendant Reading Company for the purpose of examining said plan and representing and protecting the interests of such stockholders in connection therewith, and that all of the property in which your petitioners as such Committee are interested is in the control and juris-

diction of this Court, in that the method by which the defendant Reading Company shall divest itself of all interests in the defendant The Philadelphia & Reading Coal & Iron Company involves the inter-relations between the holders of the preferred and of the common stock of the defendant Reading Company in connection with the distribution of such property or the proceeds thereof and rests in the discretion of this Court.

IV. On information and belief, that an appeal to the defendant Reading Company or its Board of Directors for a modification of said proposed plan in the interests of your petitioners and the holders of the common stock of said Company, would be a fruitless and vain form for the reason that, as appears by said notice transmitted to the stockholders of the Reading Company, such plan has been approved by said Board and in the opinion of said Board provides for the retention by the holders of both the common and preferred stocks of the Reading Company of their interests unaltered in the properties remaining with that Company.

V. On information and belief, that the interests of your petitioners and of the holders of the common stock of the Reading Company have, in the formulation of said plan, been overlooked and neglected by the Board of Directors of defendant Reading Company, as hereinafter more particularly shown.

VI. On information and belief, that the effect of the carrying out of said plan is to distribute to the preferred stockholders ratably per share with the common stockholders, a surplus of upwards of \$33,000,000 accumulated by the defendant Reading Company from the undivided net profits arising from its business, whereas in fact and in law and in compliance with the contract between the holders of the First and Second Preferred Stocks of said

Company and the holders of the Common Stock thereof, in relation to the interests of said several classes of stock in the assets and profits of said Company, all of such surplus, with the exception of a small part thereof which might possibly be claimed by the holders of said preferred stocks for dividends during the years in which it was earned and in which dividends on such preferred stocks were not fully paid, belongs under the circumstances here obtaining to the holders of the common stock of said Company, to the exclusion of the holders of both of said classes of preferred stock.

VII. That such situation is brought about by the equal distribution per share to the holders of all classes of stock of assets of the Reading Company in value more than twice (as appears on the statements of the Company) the amount of such surplus, and the recoupment or restoration of the capital of the Reading Company in part by the absorption and elimination of said surplus, and in part by the consideration to be paid by defendant Coal and Iron Company and the nominal so-called purchase price to be paid for the Coal and Iron Company stock, and that such situation becomes important to the holders of the common stock in that such existing surplus of the Company is, under the terms of the contract existing between the various classes of stock, available for dividends solely for the benefit of the holders of the common stock.

VIII. That inasmuch as the Reading Company is obliged under the decree of the Court to divest itself of said assets and under said plan receives therefor considerations which fall short of the value of said assets by an amount approximating said surplus, it appears to be necessary either to eliminate such surplus or to reduce the capital stock. That in order to obviate such inequity arising under said plan, your petitioners respectfully suggest a modification thereof by the addition to paragraph 5 thereof of the following:

"Coincidentally with the issuance and distribution of the certificates of interest in the Coal Company stock, as aforesaid, the Reading Company will reduce its capital stock by the amount of \$....., such reduction to apply to all shares of the stock of the Reading Company equally, regardless of classification into preferred and common, and such reduction to be effected by decree of the Court directing it should the Court accept this plan and so decree.

"For the purposes of carrying out such a provision, jurisdiction of the case shall be retained by the Court."

IX. That on information and belief, the aforesaid suggestion will not affect the interests of the United States of America, petitioner in this suit, and that if such plan should be so modified it will in all respects, so far as such change affects the matter, bring about a situation in full compliance with the requirements of the Supreme Court.

WHEREFORE, your petitioners respectfully pray that an order may be entered in this cause, granting unto your petitioners as a Committee as aforesaid, leave to file this petition and that the plan of dissolution now before this Court may be modified in the manner hereinbefore suggested, and your petitioners will ever pray, etc.

SEWARD PROSSER,

MORTIMER N. BUCKNER and

JOHN H. MASON,

As a Committee representing Holders
of Common Stock of the Defendant
Reading Company,

By SEWARD PROSSER,

Chairman.

WHITE & CASE,

Counsel for Petitioners,

14 Wall Street,

New York City.

J. DUPRATT WHITE,

Solicitor.

STATE OF NEW YORK, }
 County of New York, } ss:

SEWARD PROSSER, being duly sworn, says that he is one of the petitioners named in the foregoing petition and is Chairman of the Committee therein named; that he has read the foregoing petition and knows the contents thereof and that the same is true according to his best knowledge, information and belief.

SEWARD PROSSER.

Sworn to before me this 28th }
 day of February, 1921. }

ALLEN McCARTY,

Notary Public, Queens County,

Certificate filed in New York County,

Term expires March 30, 1922.

Amended and Supplemental Petition of Seward Prosser, Mortimer N. Buckner and John H. Mason as a Committee representing Holders of Common Stock for Modification of Plan of Dissolution.

(Filed March 15, 1921.)

TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT
 OF THE UNITED STATES, FOR THE EASTERN DISTRICT
 OF PENNSYLVANIA.

Now come your petitioners, SEWARD PROSSER, MORTIMER N. BUCKNER and JOHN H. MASON, as a Committee formed at the request of certain holders of common stock of defendant Reading Company, who respectfully represent unto this Court as follows (the allegations other than in paragraphs I and XI being on information and belief) :

I. That your petitioners are a Committee formed at the request of certain holders of the common stock of

defendant Reading Company and as such now hold proxies from such stockholders representing upwards of 450,000 shares of such stock of the par value of \$22,500,000 and a present market value of upwards of \$30,000,000.

II. That at the hearing before this Court at Philadelphia on March 1, 1921, pursuant to order heretofore made herein by this Court, your petitioners presented their petition for leave to intervene herein on behalf of the common stockholders whom they represent and suggesting modification of the plan of dissolution, and were by oral order of this Court thereupon made granted such leave to intervene and did thereupon file their said petition.

That this Court by like oral order thereupon granted to parties in interest leave to file other petitions and suggestions in aid of the plan of dissolution. Pursuant thereto, your petitioners, intervenors, present this, their Amended and Supplemental Petition for modification of said plan of dissolution.

III. That defendant Reading Company was incorporated by Chapter 983 of the laws of Pennsylvania of 1871, as Excelsior Enterprise Co. It is a proprietary and not an operating company. It has an authorized and outstanding capital stock of \$140,000,000, divided into shares of \$50 par value, consisting of \$28,000,000 first preferred stock, \$42,000,000 second preferred stock and \$70,000,000 common stock.

IV. That the contract between the preferred and common stockholders in reference to their respective rights in connection with the assets and profits of said Company, provides in substance that the first and second preferred stock is entitled to non-cumulative dividends at the rate of,

but not exceeding, four per cent. (4%) per annum in each and every fiscal year, in preference and priority to any payment in or for such fiscal year of any dividend on the common stock; but only from undivided net profits of the Company when and as such undivided net profits shall have been determined by the Board of Directors and only if and when the Board shall declare dividends therefrom. That if, from the business of any particular fiscal year, excluding undivided net profits remaining from previous years after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the first and second preferred stock, there shall remain surplus net profits, the Board of Directors may declare and out of such surplus net profits of such year may pay dividends upon any other stock of the Company. But no dividends shall in any year be paid on any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the first and second preferred stock. That the Reading Company reserves the right at any time, after dividends at the rate of 4% shall have been paid for two successive years on the first preferred stock, without further consent from the holder or owner of the second preferred stock, to convert the second preferred stock into one-half first preferred stock and one-half common stock and, accordingly, so to increase and issue first preferred stock and common stock to provide for such conversion, and, further, that said Reading Company has the right at any time to redeem either or both classes of its preferred stock at par in cash, if such redemption shall then be allowed by law. That copies of the certificates representing first preferred, second preferred and common stock of said Reading Company are hereto annexed, marked "Exhibit A", and made part hereof.

That defendant Reading Company has paid dividends on its said first preferred stock as follows: 3% in the year

1900, 4% in the year 1901, 3% in the year 1902 and 4% per annum thereafter and down to this date.

That defendant Reading Company has paid dividends on its said second preferred stock as follows: 1½% in the year 1903 and 4% per annum thereafter and down to this date.

That defendant Reading Company has paid dividends on its said common stock of varying amounts, from 1½% on February 1, 1905, to 6% in each of the years 1911 and 1912, and that on February 13, 1913, it paid a quarterly dividend of 2% on said common stock, thereby putting such stock on an 8% basis, and thereafter and down to this date has paid quarterly dividends of 2%, or 8% per annum, on said common stock.

V. That in the last published balance sheet of defendant Reading Company, being the balance sheet as of December 31, 1919, the following assets appear:

Philadelphia & Reading Railway Company's stock.....	\$42,481,700.
The Philadelphia & Reading Coal & Iron Company's stock.....	8,000,000.
The Philadelphia & Reading Coal & Iron Company	69,919,770.06

That in said balance sheet the following liabilities appear:

First preferred stock.....	\$28,000,000.
Second preferred stock.....	42,000,000.
Common stock	70,000,000.
Profit and loss.....	33,201,149.81

That a copy of said balance sheet is hereto annexed, marked "Exhibit B", and made part hereof.

VI. That in the last published balance sheet of defendant The Philadelphia & Reading Coal & Iron Com-

pany, being the balance sheet as of December 31, 1919, there appears the following liabilities:

Capital Stock	\$8,000,000.
Reading Company	69,919,770.

That a copy of said balance sheet is hereto annexed, marked "Exhibit C", and made part hereof.

VII. That said item of debt from the Philadelphia & Reading Coal & Iron Company to Reading Company has not remained constant, but has varied from time to time. In the balance sheet of the Reading Company as of December 1, 1896, it was \$68,154,678.99.

In the balance sheets of the Reading Company as of the dates shown below, respectively, said item of debt appeared in the following amounts:

June 30, 1897.....	\$76,004,062.37
June 30, 1898.....	77,108,652.15
June 30, 1899.....	77,280,349.13
June 30, 1900.....	78,653,349.13
June 30, 1901.....	78,798,653.83
June 30, 1902.....	79,002,720.56
June 30, 1903.....	79,116,720.56
June 30, 1904.....	79,123,888.25
June 30, 1905.....	79,135,760.58
June 30, 1906.....	79,165,226.43
June 30, 1907.....	79,195,702.63
June 30, 1908.....	75,241,269.83
June 30, 1909.....	74,800,254.83
June 30, 1910.....	75,395,786.83
June 30, 1911.....	74,423,817.42
June 30, 1912.....	73,466,529.72
June 30, 1913.....	72,980,171.62
June 30, 1914.....	72,472,767.37
June 30, 1915.....	72,022,371.37
June 30, 1916.....	71,603,134.92
December 31, 1917.....	71,122,948.66
December 31, 1918.....	70,514,388.16
December 31, 1919.....	69,919,770.06

That during the years ended June 30th as shown below The Philadelphia & Reading Coal & Iron Company paid or credited to the Reading Company in respect of interest upon said item of debt the following sums:

June 30, 1900.....	\$884,850.18
June 30, 1901.....	886,504.62
June 30, 1902.....	888,780.61
June 30, 1903.....	1,582,334.41
June 30, 1904.....	1,582,477.77
June 30, 1905.....	1,582,255.21
June 30, 1906.....	1,583,304.53
June 30, 1907.....	1,583,914.05
June 30, 1908.....	1,584,485.40
June 30, 1909.....	935,003.19
June 30, 1910.....	743,957.87
June 30, 1911.....	320,000.00
June 30, 1912.....	810,998.97
June 30, 1913.....	2,269,405.15

That on page 5 of the third annual report of the Reading Company for the fiscal year ended June 30, 1900, the following appears:

“Note.—Interest upon the debt of The Philadelphia and Reading Coal and Iron Company to the Reading Company is only payable when earned.”

VIII. That in the last published balance sheet of defendant Philadelphia & Reading Railway Company, being the balance sheet as of December 31, 1919, there appear among its liabilities:

Capital Stock.....	\$42,481,700.
Additions to property through income and surplus since June 30, 1907.	33,383,186.
Profit and loss.....	10,410,339.

That a copy of said balance sheet is hereto annexed, marked “Exhibit D”, and made part hereof.

IX. That the effect of the carrying out of said plan is to distribute to the preferred stockholders ratably per share with the common stockholders, a surplus of upwards of \$33,000,000 accumulated by the defendant Reading Company from the undivided net profits arising from its business, whereas in fact and in law and in compliance with the contract between the holders of the First and Second Preferred Stocks of said Company and the holders of the Common Stock thereof, in relation to the interests of said several classes of stock in the assets and profits of said Company, all of such surplus, with the exception of a small part thereof which the holders of said preferred stocks might assert could not be distributed to the common stock because dividends during the years in which it was earned were not fully paid on such preferred stocks, belongs under the circumstances here obtaining to the holders of the common stock of said Company, to the exclusion of the holders of both of said classes of preferred stock.

X. That such situation is brought about under said plan by the equal distribution per share to the holders of all classes of stock of assets of the Reading Company in value more than twice (as appears on the statements of the Company) the amount of such surplus, and the recoupment or restoration of the capital of the Reading Company in part by the absorption and elimination of said surplus, and in part by the consideration to be paid by defendant Coal and Iron Company and the nominal so-called purchase price to be paid for the Coal and Iron Company stock, and that such situation becomes important to the holders of the common stock in that such existing surplus of the Company is, under the terms of the contract existing between the various classes of stock, available for dividends solely for the benefit of the holders of the common stock.

XI. That it is not material as affecting or changing the interests of the holders of the common stock of the defendant Reading Company whether the several steps of said plan are carried through in the order in which stated in said plan as presented to this Court, or whether said steps are carried through in some other order, as by first a merger between the Reading Company and the Philadelphia & Reading Railway Company and then a distribution of the assets of the Reading Company made up of its holdings of the stock and debt of the Coal Company, or by first the distribution of such assets of the Reading Company and thereafter a merger between the Reading Company and the Railway Company, because in either event the result will be, if said plan is carried out as proposed, to eliminate the surplus of the Reading Company as it now exists or to reduce the surplus of the Reading Company, as it will exist after the merging of the Reading Company and the Philadelphia & Reading Railway Company, by an amount substantially the same as the existing surplus.

XII. That under the contract between the holders of the first and second preferred stocks of the Reading Company and the holders of the common stock thereof in relation to the interests of said several classes of stock in the assets and profits of said Company, all of the surplus now existing in the Reading Company and shown on its said statement and all of the surplus that will be created in said Company by the merger of it with the Philadelphia & Reading Railway Company, with the exception of such small part thereof as the holders of said preferred stocks might assert could not be distributed to the common stock because dividends during the years in which it was earned were not fully paid on such pre-

ferred stocks, belongs under the circumstances here obtaining to the holders of the common stock of said Reading Company to the exclusion of the holders of both of said classes of preferred stock.

XIII. That inasmuch as the Reading Company is obliged under the decree of the Court to divest itself of said assets, being the stock and debt of defendant Coal & Iron Company, and under said plan receives therefor considerations which fall short of the value of said assets, it appears to be necessary either (a) to eliminate the surplus of defendant Reading Company as it now exists or to reduce the surplus of the Reading Company as it will exist after the proposed merger with the Philadelphia & Reading Railway Company, or (b) to reduce the capital stock of the Reading Company, provided that the principle of said plan is to be carried out of making an equal distribution to both the preferred and common stocks in connection with the divesting of said assets. That in order to obviate such inequity arising under said plan, your petitioners respectfully suggest the following modification thereof by the addition to article 5 thereof of the following:

"Coincidentally with the issuance and distribution of the certificates of interest in the Coal Company stock, as aforesaid, the Reading Company will reduce its capital stock by the amount of \$. such reduction to apply to all shares of the stock of the Reading Company equally, regardless of classification into preferred and common, and such reduction to be effected by decree of the Court directing it should the Court accept this plan and so decree.

"For the purposes of carrying out such a provision, jurisdiction of the case shall be retained by the Court."

That the amount by which such reduction should be made is the net value of the assets of which the Company is required to divest itself, namely:

The true value of the \$8,000,000 capital stock of the Coal Company and of the \$69,919,770 debt of the Coal Company to the Reading Company, such value to be ascertained in such manner as to this Court shall seem proper and sufficient, less \$25,000,000 bonds and \$10,000,000 cash or current assets to be received from the Coal Company and \$5,600,000 cash to be received from the stockholders.

XIV. That should it appear to this Court that this Court is without power to compel the stockholders of the Reading Company to take proceedings to reduce its capital stock, then your petitioners respectfully suggest as an alternative modification of said plan, to accomplish the requirements of said mandate and still to preserve the equities between the holders of the several classes of stock of the defendant Reading Company in accordance with the contract between them, that in the second paragraph of article 5 of said plan the words:

"Such no par value stock will be sold to the stockholders of the Reading Company, preferred and common, share and share alike, for \$5,600,000, or \$2 for each share of Reading stock"

be deleted and that there be substituted in place thereof the following:

"Such no par value stock will be sold to the holders of the common stock of the Reading Company for an aggregate sum equal to the amount by which the book value of the stock and debt of the Coal Company of which the Reading Company must be divested, after deducting the aforesaid \$10,000,000 in cash or current assets and \$25,000,000 in bonds of

the Coal Company, exceeds the existing surplus of the Reading Company; for illustration:

Value of Coal Company's stock and debt as carried on books of Reading Company, December 31, 1919.	\$77,919,770.
Deduct cash or current assets and bonds to be received from Coal Company	35,000,000.

Net book value of distribution to be made	\$42,919,770.
Surplus of Reading Company (to be brought up to date)	33,201,149.

Amount to be paid by common stockholders to restore capital, or about \$7 per share of Reading common stock (based on surplus shown in December 31, 1919, statement)	\$9,718,621."
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XV. That neither of the aforesaid suggestions will affect the interests of the United States of America, petitioner in this suit, and that if such plan should be modified by either of the methods hereinbefore suggested it will in all respects, so far as such change affects the matter, bring about a situation in full compliance with the requirements of the Supreme Court.

WHEREFORE, your petitioners, having been heretofore permitted by this Court to intervene herein and having filed their petition of intervention, respectfully pray that this amended and supplemental petition suggesting modification of the plan of dissolution may be received and entertained and that said plan of dissolution now before this Court may be modified in any one of the methods

hereinbefore suggested as to this Court shall seem proper and in accordance with equity, and your petitioners will ever pray, etc.

SEWARD PROSSER

MORTIMER N. BUCKNER and

JOHN H. MASON,

As a Committee formed at the request
of Certain Holders of Common Stock
of Defendant Reading Company,

By SEWARD PROSSER

Chairman.

WHITE & CASE,

Counsel for Intervenors,

14 Wall Street,

New York City.

J. DUPRATT WHITE,

Solicitor.

STATE OF NEW YORK, }
 County of New York, } ss. :

SEWARD PROSSER, being duly sworn, says that he is one of the petitioners named in the foregoing petition and is Chairman of the Committee therein named; that he has read the foregoing petition and knows the contents thereof and that the same is true according to his best knowledge, information and belief.

SEWARD PROSSER

Sworn to before me this 14th }
 day of March, 1921. }

ALLEN McCARTY

Notary Public, Queens County,

Certificate filed in New York County,

Term expires March 30, 1922.

Exhibit A.

Certificates of First Preferred, Second Preferred and Common Stock, respectively, of Reading Company. See Exhibit B, Petition of Continental Insurance Company *et al.*, *supra*, pp. 82, 84, 86.

Exhibit B.

READING COMPANY.

Dr.

BALANCE SHEET, DECEMBER 31, 1919.

	AMOUNT.	TOTAL
RAILROAD EQUIPMENT:		
Locomotive Engines and Cars	\$43,890,418 81	
FLOATING EQUIPMENT:		
Sea Tugs, Barges, etc.	4,331,267 31	\$48,221,686
Leased Equipment		20,049,813
Uncompleted Equipment		171,091 2
Real Estate		16,721,411 11
Mortgages and Ground Rents		251,266 6
BONDS:		
Philadelphia and Reading Railway Company's Bonds	\$20,000,000 00	
Bonds of sundry companies (see page 19)	24,683,113 52	44,683,113 52
STOCKS:		
Philadelphia and Reading Railway Company's Stock	\$42,481,700 00	
The Philadelphia and Reading Coal and Iron Company's Stock	8,000,000 00	
Stocks of sundry companies (see page 20)	53,582,303 40	104,064,003 40
THE PHILADELPHIA AND READING COAL AND IRON CO.		69,919,779 40
SUNDRY RAILROADS, ETC. (see page 21)		10,447,112 2
CURRENT ASSETS:		
Cash	\$3,112,957 88	
Notes Receivable	100,000 00	
Central Union Trust Co. of New York, Trustee	6,709 01	
Accrued Income	2,090,050 87	
Current Business	592,019 08	
Philadelphia and Reading Railway Company	110,272 96	
U. S. Railroad Administration, P. & R. Railroad	1,377,536 58	7,302,546 29
UNADJUSTED DEBITS		736 4
		\$127,156,111 6

NOTE.—The foregoing is a reproduction of page 14 of the Twenty-second Annual Report of the Reading Company.

Exhibit B.

READING COMPANY.

BALANCE SHEET, DECEMBER 31, 1919.

Cr.

	AMOUNT.	TOTAL
General Mortgage Loan, 1897-1907 Total issued, \$106,144,000 00		
Less General Mortgage Bonds purchased and canceled for		
Sinking Fund 9,620,000 00	\$96,524,000 00	
Bonds and Mortgages on Real Estate	800,315 28	
Delaware River Terminal Bonds	500,000 00	
Delaware River Terminal Extension Bonds	534,000 00	
Birmingham and Northern R. R. Co. Stock Trust Certificates	1,295,000 00	
Reading Company—Jersey Central Collateral Gold Bonds	23,000,000 00	
Bonds—Mortgage New Locomotive and Machine Shops, Reading	1,200,000 00	\$123,853,315 28
First Preferred Stock	\$28,000,000 00	
Second Preferred Stock	42,000,000 00	
Common Stock	70,000,000 00	140,000,000 00
Contingent Account (for Unadjusted Matters in Connection with Foreclosure Sale, etc.)		4,153,228 98
ASSETS:		
Accounts Payable	\$1,577,290 27	
Bills Payable	5,300,000 00	
Accrued Interest, not due	2,221,241 87	
Accrued Taxes, estimated	621,485 07	
Rentals and Interest Matured and Unpaid	263,218 62	9,983,235 83
Equipment Trust Obligations (Series "F")		4,200,000 00
" " " (Series "G")		6,750,000 00
Sinking Fund General Mortgage Loan		335 45
Profit and Loss		33,907,149 81
Unadjusted Credits		17,850 90
		\$328,189,335 85

NOTE.—The foregoing is a reproduction of page 15 of the Twenty-second Annual Report of the Reading Company.

Exhibit C.

THE PHILADELPHIA & READING COAL & IRON COMPANY

GENERAL BALANCE SHEET, DECEMBER 31, 1919.

Assets—		Liabilities	
Coal lands.....	\$44,329,554	P. & R. collateral sinking fund loan, 1892-1932.....	\$900,000
Timber lands.....	840,665	Capital stock.....	8,000,000
New York & Eastern depots..	892,834	Reading Company.....	69,919,751
West. Yards & depots.....	2,012,059		
Miners & other houses.....	1,128,901	Total capital accts.....	\$78,819,751
Pottsville shops, real est. & improvements.....	461,105	Current Liabilities:	
Storage yards and washeries..	675,108	Pay rolls & vouchers.....	\$2,400,000
Other real estate.....	423,254	Due for coal purch'd.....	12,000
Improvem'ts & Equip. at collieries.....	14,479,751	Due for royalty on coal mined.....	343,000
Stock & bonds of & loans to Cos. controlled.....	9,919,510	Freight & tolls due foreign roads.....	19,000
		Cos. and individuals.....	514,700
Total capital accts.....	\$75,162,731	Int. due & uncollected.....	0
Stocks, bonds & mtges.....	498,845	Int. & taxes accrued.....	562,000
Investments in U. S. Liberty bonds.....	6,482,546		
Current Assets:		Total current liabs.....	3,866,000
Cash.....	\$2,231,128	Miners' benefic'l fund.....	60,000
Bills receivable.....	7,459	Workmen's compensation fund.....	1,146,000
Coal accounts.....	7,432,053	Contingent fund.....	1,665,000
Rent accounts.....	56,036	U. S. RR Administ'n:	
Cos. & individuals.....	3,230,068	Phil. & Read'g RR.....	5,000
Coal on hand.....	3,436,075	Port Reading RR.....	0
Supplies & materials.....	3,351,843	Profit and loss.....	19,013,000
Accrued int. on bonds.....	60,934		
Total current assets.....	\$19,805,596		
Depletion fund.....	1,485,066		
Workmen's fund.....	1,146,304		
Total.....	\$104,581,088	Total.....	\$104,581,088

NOTE—Taken from Poor's Manual of Railroads 1920, page 1134.



Exhibit D

PHILADELPHIA AND READING RAILWAY COMPANY.

Dr.

BALANCE SHEET, DECEMBER 31, 1919.

	AMOUNT.	TOTAL
ASSETS.		
INVESTMENT IN ROAD AND EQUIPMENT.		
Road to June 30, 1907	\$94,724,974 02	
Road since June 30, 1907	24,280,072 70	\$ 19,005,047
Improvements on Leased Railway Property		20,879,751
Miscellaneous Physical Property		1,546,141
INVESTMENTS IN AFFILIATED COMPANIES.		
Stocks	\$185,511 47	
Advances	1,994,895 41	2,180,407
OTHER INVESTMENTS.		
U. S. Liberty Loan Bonds	\$5,907 58	
Miscellaneous	27 43	5,935 01
CURRENT ASSETS.		
Cash	\$673,248 76	
Loans and Bills Receivable	16,789 30	
Miscellaneous Accounts Receivable	12,394,361 82	
Rents Receivable	11,893 78	13,096,392
DEFERRED ASSETS.		
Working Fund Advances	\$1,950 00	
Insurance Premiums Paid in Advance	1,582 37	
Insurance Fund (Cash and Securities)	1,021,536 18	1,023,118 55
UNADJUSTED DEBITS		
		23,125,440
SECURITIES ISSUED OR ASSUMED—UNPLEDGED		
		2,776,000
		\$173,735,141

NOTE—The foregoing is a reproduction of page 13 of the Twenty-second Annual Report of the Philadelphia and Reading Railway Company.

Exhibit D.

PHILADELPHIA AND READING RAILWAY COMPANY.

BALANCE SHEET, DECEMBER 31, 1919.

Ca.

	AMOUNT.	TOTAL.
LIABILITIES.		
CAPITAL STOCK		\$42,481,700 00
PAID-UP DEBT.		
Prior Mortgage Loan, 1868—1893—1933	\$3,696,000 00	
Improvement Mortgage Loan, 1873—1897—1947	9,328,000 00	
Consolidated Mortgage Loan, 1882—1922—1937, First Series	5,766,717 00	
Consolidated Mortgage Loan, 1893—1933, Second Series	535 00	
Debenture Loan, 1891—1941	8,500,000 00	
Purchase Money Mortgage, 1896	20,000,000 00	
City of Philadelphia Subway Loan, 1914—1922	343,500 00	
Bonds and Mortgages on Real Estate	101,833 61	
Philadelphia and Reading Railway Company Subway Mortgage Loan	2,776,000 00	49,512,585 61
NON-NEGOTIABLE DEBT TO AFFILIATED COMPANIES		381,333 43
CURRENT LIABILITIES.		
Miscellaneous Accounts Payable	\$404,560 53	
Audited Vouchers and Wages Payable	11,877 22	
Interest Matured Unpaid	10,395 00	
Unmatured Interest Accrued	205,146 34	
Unmatured Rents Accrued	357,217 08	
Dividends Accrued and Unpaid	1,650,000 00	2,639,196 19
DEFERRED LIABILITIES		1,373 70
UNADJUSTED CREDITS.		
Tax Liability	\$1,056,469 48	
Insurance Fund	1,009,006 69	
Other Unadjusted Credits	32,662,817 13	34,728,293 30
ADDITIONS TO PROPERTY THROUGH INCOME AND SURPLUS SINCE JUNE 30, 1907		33,383,186 70
Profit and Loss		20,470,338 81
		\$173,738,206 81

NOTE.—The foregoing is a reproduction of page 14 of the Twenty-second Annual Report of the Philadelphia and Reading Railway Company.

Petition of Frances T. Ingraham for Information from the Reading Company as to the Value of Her Interest in the Reading Property.

(Filed March 15, 1921.)

The petition of the above named respectfully represents:

That she resides at 373 Washington Avenue, Brooklyn, New York. That in March, 1921, an order was entered herein granting your petitioner and George S. Ingraham, Robert S. Ingraham, Mabel B. Ingraham and Marcus L. Taft leave to intervene. That such intervenors are holders of 11,050 shares of the common stock of the Reading Company. That your petitioner has been a stockholder of said company for several years. That she has been unable to receive any adequate information as to the segregation of the property of the Reading, as will appear from the annexed affidavits of Floyd W. Mundy, Austin W. Penchoen and George S. Ingraham; that petitioner is informed that said Reading Company proposes to obtain from this Court authority for its plan of segregation of its assets and that your petitioner will be required to elect as to the assets of said company in which she desires to hold an equitable interest; that your petitioner is unable to make such election intelligently until she has been given more definite knowledge of the Reading's assets and that your petitioner in her own behalf and in behalf of the above mentioned intervenors desires an order from this Court which will require the Reading Company to impart to said intervenors such information.

Petitioner therefore respectfully prays for directions of this Court as to how she may obtain such knowledge of the condition of the Reading Company as will permit

petitioner to act intelligently at this critical period in the history of said company.

And she will ever pray.

Dated, Brooklyn, N. Y., March 14, 1921.

FRANCES T. INGRAHAM.

GEORGE S. INGRAHAM,
Attorney for Petitioner,
44 Court Street,
Brooklyn, New York.

STATE OF NEW YORK, }
City of New York, } ss:
County of Kings. }

FRANCES T. INGRAHAM, being duly sworn, deposes and says: that I have read the foregoing petition and am acquainted with the facts stated therein and that such facts are true.

FRANCES T. INGRAHAM.

Sworn to before me this 14th }
day of March, 1921. }

FRED'K BUEHLER,

[SEAL] Notary Public, Queens County N. Y.
Cert. Filed in Kings County.
(County Clerk's Certificate)

STATE OF NEW YORK, }
City of New York, } ss:
County of Kings. }

FLOYD W. MUNDY, being duly sworn says: that he resides at 30 East 60th Street, New York City, N. Y.; that he became engaged in the brokerage business and the study of securities in Chicago in 1899, and that in the year 1901 he came to New York, where he has since resided.

That since 1899 he has continuously devoted a large

part of his time to the study of securities specializing in railroad securities.

That since 1905 he has been a partner in the firm of Jas. H. Oliphant & Co., doing business at 61 Broadway, New York City.

That he has written a number of articles on the subject matter of securities and since 1901 has issued annually, with the exception of two or three years, a book on railroad operations and finances entitled, "The Earning Power of Railroads"; that this book has had a wide circulation and has been more or less recognized as a standard reference book; that deponent has read 90 per cent of all official annual railroad reports issued during the last twenty years.

That he has discussed with men interested in railroad securities on various occasions the Reading Company, and the general opinion seemed to be, and deponent himself shared therein, that the reports of the Reading Company were difficult to analyze and were much more obscure than the average railroad report.

That deponent has never been able to ascertain the value of the Reading Company, although he has been interested therein and has sought for such information; that he is familiar with the leading financial publications of this part of the country, and that among the same are, John Moody and the Wall Street Journal.

That in the Moody weekly letter of May 6, 1920, it is said, after an attempt to estimate the value of the Reading assets:

"Admittedly these estimates are crude. They cannot be otherwise in view of the general lack of evidence as to the actual values of the subsidiary properties. However, they are based upon such income accounts, balance sheets, and market quotations as we have. The indicated value of the equities available in case of dissolution for Reading Company stocks may thus be placed roughly as follows:

Equity in P. & R. Railroad property..	\$106,337,800
In Philadelphia & Reading Coal & Iron property	30,519,300
In Reading Iron Company.....	22,791,500
In Lehigh & Wilkes-Barre Coal Com- pany	16,537,800
In railroad property of the Jersey Central	10,294,000
	<hr/>
	\$186,480,400"

That in the Wall Street Journal of May 5, 1920, it is stated that the estimates for the Reading as now constituted run from \$120 to \$155 per share.

That in the absence of full and complete statements one is unable to determine in full the earning capacity of properties controlled or owned by the parent company.

That in the case of the Reading Company, one confusing item in the Reading reports issued for years past relates to the receipts by the Reading Company of dividends and interest. For example, in the report for 1919, on page 13, under "Receipts" the item appears "Interest and dividends receipts \$11,600,508.48." There is no place in the reports that this item is analyzed.

That the only striking bit of finance which the Reading Company has undertaken in the last 20 years, except for the reduction of maturing bonds, was the issuance of 23 million "Jersey Central Collateral" 4 per cent bonds. These bonds were issued for the purchase at 160 a share of about half of the capital stock of the Central Railroad of New Jersey. The records show that the Central Railroad of New Jersey has never been, since 1902, sold as low as \$160 a share.

That while the Reading Company General Mortgage bonds today are not "legal" investment, they sell from 5 to 8 points higher than other prime legal bonds; and that the preferred stocks today sell in the market for 80 per cent of their face value, while other preferred stocks for years recognized as equal in soundness and

security, sell below 70 per cent of their face value, for example: Norfolk & Western Railway preferred, Union Pacific Railroad preferred, both 4 per cent and non-cumulative stocks.

That this relatively high price for Reading Company preferred stock is doubtless a reflection of the expectation on the part of the holders of these securities, that they will be benefitted by the pending segregation plan.

That in reading the reports of the Reading Company and of the Reading Coal & Iron Company for a period of 20 years, the only statement that is found that presents a real concrete statement of the Reading Company's position in respect to the holding of coal lands, is found in the report of 1901, 8th paragraph, as follows:

"The acquisition of the control of the Jersey Central is not only of enormous advantage because of the additional facilities given to the system, but through this acquisition the Reading System now owned and controlled about 63 per cent of all the unmined anthracite coal in the State of Pennsylvania."

That while the Reading Company is thus considered practically to own and control over 60 per cent of the unmined anthracite coal in Pennsylvania, the Coal Company's profits have for years been small as compared with the profits of other anthracite coal companies, such as the Pennsylvania Coal Company, the Lehigh & Wilkes-Barre Coal Co. (which has recently declared a 150 per cent cash dividend) and the Delaware, Lackawanna & Western Coal Co.

That from the opinion of Justice Clark reported in 253 U. S. 26, it appears that when the Reading Company was reorganized in 1896 a report was made to the New York Stock Exchange that the value of the Reading Coal property was 90 million. That it is proposed that the Reading Coal Company deliver to the Reading Company 25 million dollars worth of bonds and 10 million dollars worth of cash; that the Reading Company is to use 10

million dollars of this as a bonus to the General Mortgage bondholders to release the coal property stock, so that in fact the Reading Company will receive only 25 million dollars for property which was stated to be worth 90 million.

That the balance sheet of the Philadelphia & Reading Coal & Iron Company of December 31, 1918, showed assets of 102 millions of dollars, whereas the entire liabilities, outside of the indebtedness to the Reading Company and the capital stock owned by the Reading Company amount to less than 8 million dollars (see pages 12 and 13 of the 1918 report); that this report would show, therefore, that according to the books of the Coal Company that there was a net value per books of \$94,000,000 belonging to the Reading Company.

Attached hereto as Exhibits "A" and "B" are the forms of certificates respectively of the Reading first and second preferred stocks, which set forth all the rights in the Reading Company of the holders of said stock.

FLOYD W. MUNDY.

Sworn to before me this }
12th day of March, 1921. }

FRED'K BUEHLER,

Notary Public Queens County, N. Y.

Cert. filed in Kings County.

[SEAL]

Exhibit "A".

Certificate of First Preferred Stock printed as part of Exhibit B—Petition of Continental Insurance Company, *et al.*, *supra*, pp. 82, 83.

Exhibit "B".

Certificate of Second Preferred Stock printed as part of Exhibit B to petition of Continental Insurance Co., *et al.*, *supra*, pp. 84, 85.

STATE OF NEW YORK, } ss:
County of Kings. }

AUSTIN W. PENCHOEN, being duly sworn, says:

That he resides at 379 Ocean Avenue, Brooklyn, New York; that in the month of January, 1897, he was employed as a clerk by the Long Island Loan & Trust Company, then located at 203 Montague Street, Brooklyn, N. Y.; that in 1899 he became the loan clerk for said company and continued in that position until the merger of said company with the Brooklyn Trust Company, in January, 1913, and continued as such until January, 1916, when he was made Assistant Secretary; and that from that date until March, 1920, when he severed his connections with said company, he was in charge of loans and also kept in touch with all financial matters pertaining to all securities held by the Brooklyn Trust Company, both for its own account and also in a fiduciary capacity.

That the Brooklyn Trust Company, by its last public statement, showed assets of over \$49,000,000, of which the loans and discounts amounted to approximately \$14,000,000, and the securities owned by the company were upwards of \$23,000,000; that from 1899 he has been actively interested in securities and that especially during the last seven or eight years he has read many financial publications, viz.: Financial Chronicle, Moody's Analysis, Poor's Manual, The Manual of Statistics, Daily Digest, Brookmire's Service, and many other financial publications relating to securities; that he has acted in advisory capacity to customers; that frequently he would daily have to examine securities of the par value of over \$10,000,000 in connection with his regular business.

That at least as early as the year 1905 he had acquaintances that were particularly interested in Reading securities, and that such acquaintances have continuously therefrom been interested therein; that for said

reason deponent has had a special interest in seeking to acquire information as to the standing of the said Reading Company; that said Reading Company stock was owned to a large extent by those who kept their securities in the Brooklyn Trust Company; that in spite of the Company's issuing annual reports, they are so incomplete and vague that no intelligent opinion could be made of the value of its securities or the earning power of itself or its subsidiary companies.

That the Reading Railway Company's reports do show that it derives a very small percentage of its income from carrying coal produced by the Reading Coal Company; that in 1919 it received only about \$6,000,000 therefrom, while the total income was about \$80,000,000.

That the capital of the Reading Company consists of \$140,000,000, of which \$70,000,000 is common stock, \$28,000,000 first preferred 4% non-cumulative stock, and \$42,000,000 second preferred non-cumulative 4% stock; that the last record of the holdings of the New York Central and the Baltimore & Ohio of the Reading securities that deponent has seen was as of December 31, 1919, and that on that date such holdings were as follows:

	1st Preferred.	2nd Preferred.	Common.
N. Y. Central.....	\$ 6,065,000	\$14,265,000	\$ 9,852,500
Baltimore & Ohio.....	6,065,000	14,265,000	10,002,500
	<hr/>	<hr/>	<hr/>
	12,130,000	28,530,000	19,855,000
			12,130,000
			28,530,000
			<hr/>
		Total,	\$60,515,000

That Reading General Mortgage 4% bonds are not a legal investment in New York State, and yet they sell at a higher market value than high-grade legal bonds, such as Chicago & Northwestern General 4's selling at 74, Atchison General 4's selling at 77, and Northern Pacific prior lien 4's at 75; that the Reading General Lien sell

at 82; that the range of the common and preferred stocks of the Reading for 1920 and 1921 are as follows, to wit:

		Highest.	Lowest.
Reading Common for 1920.....		103	64 $\frac{3}{4}$
do 1921.....		89 $\frac{1}{4}$	67 $\frac{1}{4}$
Reading 1st pfd. in 1920.....		61	32 $\frac{7}{8}$
do 1921.....		55	37 $\frac{1}{4}$
Reading 2nd pfd. in 1920.....		65 $\frac{1}{2}$	33 $\frac{1}{4}$
do 1921.....		57 $\frac{3}{4}$	40

That on March 1st, 1921, the market value of said stocks was as follows, to wit:

Reading common.....	73
Reading 1st pfd.....	45
Reading 2nd pfd.....	46

That since said date and since the reports have appeared in the financial papers of the opposition to the Reading plan, the Reading securities have sold as low as the following, to wit:

Reading common.....	67 $\frac{1}{4}$
Reading 1st pfd.....	37 $\frac{1}{4}$
Reading 2nd pfd.....	40

That since the Reading plan was announced, the sale for the rights for each share of the Reading stock has been as follows:

High	20
Low	13 $\frac{1}{2}$

In paragraph 5 of the Reading plan there is a reference to the proposal to issue assignable certificates of interest in accordance with the Union Pacific-Southern Pacific plan. It should be stated that such certificates carry no interest nor other income to the original holders thereof, but merely are an evidence of title. When assigned, of course, they may become income-paying securities.

That within six months the market value of 11,050

shares of the common stock of the Reading has been in excess of \$1,100,000.

AUSTIN W. PENCHOEN.

Sworn to before me this {
12th day of March, 1921. }

FRED'K BUEHLER,

Notary Public, Queens County, N. Y.

Certificate filed in Kings County.

[SEAL]

STATE OF NEW YORK, {
County of Kings. } ss:

GEORGE S. INGRAHAM, being duly sworn, says: That he resides at 373 Washington Avenue, Brooklyn, New York. As will appear from the petition herein verified the 12th day of March, 1921, and filed in the Clerk's Office herein, and from the affidavits annexed thereto, deponent is attorney for, and has power of attorney from, Frances T. Ingraham, Robert S. Ingraham, Mabel B. Ingraham and Marcus L. Taft; that said Ingrahams and Marcus L. Taft and the deponent are the owners of 11,050 shares of the common stock of the Reading Company.

That all of said Ingrahams have been owners of a large amount of Reading stock for several years, and that Marcus L. Taft has been the owner of Reading stock for several months.

That said beneficiaries are widely scattered and that the petition herein is nominally in the name of Frances T. Ingraham, although in reality it is made for the benefit of each of said parties, as it was not feasible to obtain the signatures thereto of all of such owners; and that said petition was drawn by deponent who has authority to appear herein as attorney for all said beneficiaries;

that deponent during the present month, March, 1921, has examined the papers herein on file in the office of the Clerk of the Court of the Eastern District of Pennsylvania, but can find therein only very vague reference as to the assets of the Reading Company; that although deponent has made diligent efforts to familiarize himself with the value of such assets, he has been unable to do so, and that the reason therefor will appear in part in the accompanying affidavits of Floyd W. Mundy and Austin W. Penchoen.

That the plan of the segregation of the Reading Company was duly received by mail at deponent's office. That, through inadvertence deponent did not read the same till February 28th last and then discovered that he required many papers from these intervenors residing in different States, and in the rush has not had time to arrange the same with the system that he would desire, but that he believes that he can spell out herein all the facts now material. At the hearing herein, March 1, 1921, according to deponent's best recollection, it was stated that the plan was sent to the stockholders under the Court's order.

That the petition of Frances T. Ingraham and others for intervention herein, dated March 12, 1921, and the exhibits thereto attached, are made a part of this application.

GEO. S. INGRAHAM.

Sworn to before me this 12th }
day of March, 1921. }

FRED'K. BUEHLER,

[SEAL] Notary Public, Queens County, N. Y.
Cert. filed in Kings County.

Petition of Adrian Iselin, Robert B. Dodson, Edwin G. Merrill and William A. Law, as a Committee representing certain holders of First and Second Preferred Stock of Reading Company, for Leave to Intervene.

(Filed March 15, 1921.)

**TO THE HONORABLE JUDGES OF THE DISTRICT COURT
OF THE UNITED STATES, FOR THE EASTERN DISTRICT
OF PENNSYLVANIA.**

Your petitioners, Adrian Iselin, Robert B. Dodson, Edwin G. Merrill and William A. Law, as a Committee on behalf of and representing certain holders of First Preferred Stock and Second Preferred Stock of the defendant Reading Company, respectfully file this petition for leave to intervene and allege as follows:

I.

Your petitioners represent the holders of 89,611 shares of First Preferred Stock and 117,786 shares of Second Preferred Stock, having an aggregate par value of \$10,369,850. Holders of First Preferred and Second Preferred Stock of the foregoing amount have executed proxies to your petitioners to appear herein to protect the interests of the holders of the Preferred Stock. The total amount of First Preferred Stock outstanding is \$28,000,000 and of Second Preferred Stock outstanding is \$42,000,000, of which \$40,660,000, par value, First and Second Preferred, as your petitioners are informed, is owned by the Baltimore & Ohio Railroad Company and the New York Central Railroad Company. The persons who have executed proxies to your petitioners are investors and estates who have had no part in framing the so-called plan of reorganization or dissolution of the defendant Reading Company, which plan, pursuant to the

mandate of the Supreme Court of the United States and this honorable Court, was submitted to this Court on or about February 14, 1921.

II.

Your petitioners ask leave to intervene in order to protect the interests of the First and Second Preferred stockholders against the demands of certain common stockholders of defendant Reading Company, who, by the so-called Prosser Committee representing holders of common stock, have filed a petition for leave to intervene and have suggested a modification of the said plan of reorganization or dissolution, which if made or allowed by the Court will seriously impair the rights of the holders of First Preferred and Second Preferred Stock. It is also necessary that your petitioners intervene in order to protect their interests against the demands of holders of any other class of securities of the defendant Reading Company.

III.

Your petitioners aver that the power and authority of this Court extends equally to all classes of security holders of defendant Reading Company, including holders of General Mortgage Bonds, First and Second Preferred and Common stock. This is so because the General Mortgage Bonds and the three classes of stock were each created by and issued under the Plan of Reorganization of 1896, which plan and the corporate organization created pursuant thereto, the Supreme Court has declared unlawful. The decree of this Court entered October 8, 1920, upon the mandate of the Supreme Court directs that the defendants shall submit

“a plan for the dissolution of the unlawful combination between the Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, the Central Railroad Company of New Jersey, and the Lehigh &

Wilkes-Barre Coal Company, existing and maintained through the Reading Company, with such provisions for the disposition of the shares of stock and bonds and other property of the various companies, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other, of the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal and Iron Company, the Central Railroad Company of New Jersey and the Lehigh & Wilkes-Barre Coal Company, to the end that the affairs of all these now combined companies may be conducted in harmony with the law."

The mandate also directs that

"if defendants shall fail to present a plan within the period stated, or extended, this court will take such further steps as may then seem necessary to dispose of the stock, bonds and property referred to, and to dissolve effectually the unlawful combination so as to recreate out of the elements composing said combination a new situation in harmony with the law."

These four classes of securities—to wit, General Mortgage Bonds, First and Second Preferred and Common Stock, having been created and issued at the same time and under one plan, it follows that so far as the dissolution is concerned they stand alike. If the consent of the General Mortgage Bondholders or of the Trustee under the General Mortgage of 1896 is necessary to the Dissolution plan, then likewise the consent of the First Preferred Stockholders and Second Preferred Stockholders is necessary. We submit that the authority of the Court in enforcing the mandate and recreating a condition in harmony with the law extends equally to all classes of security holders.

IV.

Your petitioners aver to be just and equitable that part of the proposed plan of dissolution which accords the holders of First and Second Preferred Stock the right

to participate with the holders of Common Stock in the purchase of stock of the Coal Company at the rate of \$2.00 for each share of Reading stock.

Under the 1896 plan of reorganization, substantially all the First and Second Preferred Stock and Common Stock, together with many millions of General Mortgage Bonds, were issued and delivered *en bloc* to pay for the properties and assets acquired by the Reading Company. Among the assets so acquired by the Reading Company at that time was a claim of the old Philadelphia and Reading Railroad Company against the Reading Coal and Iron Company for \$68,164,678.99, representing "Advances for Cost of its Property in Excess of its Capital Stock" (Reading Company Balance Sheet, December 1, 1896). As stated above, all the First and Preferred Stock of the Reading Company was issued in part payment, among other things, for said claim of upwards of \$68,000,000, and \$8,000,000 par value of the capital stock of the Philadelphia & Reading Coal & Iron Co., which stock has ever since then been carried as an asset on the balance sheet of the Reading Company worth \$8,000,000. The claim for advances has always been carried on the books of the Reading Company and the Coal Company as an open account. The balance sheet of the Reading Company for December 31, 1919, carries the item at a value of \$69,919,770.06.

The mandate compels the segregation of the Reading Company from the coal properties, the acquisition of which was made possible through the issuance of \$70,000,000 First and Second Preferred Stock in 1896. The mandate further requires that the plan of dissolution establish the "entire independence" of the Coal Company from the Reading Company. Accordingly, in order to obey the mandate, the proposed plan contemplates the elimination from the books of both companies of the said claim for \$69,919,770.06. It is manifest that this would be a distribution of part of the assets to acquire which the preferred stock was issued, and accordingly, the hold-

ers of the preferred stock are entitled to participate in the purchase on an equal basis with the holders of common stock.

V.

Your petitioners aver that the petition for leave to intervene, filed by the so-called Prosser Committee on behalf of certain common stockholders, erroneously states that the effect of the carrying out of said plan is to distribute a surplus of upwards of \$33,000,000 accumulated by the Reading Company from the undivided net profits arising from its business, whereas the facts are as above stated. But your petitioners aver that, even if that were the effect of the plan, the holders of the preferred stock would nevertheless be entitled to share in such a distribution.

The act incorporating the Reading Company (May 24, 1871), in Section 2, declares that said corporation shall enjoy and exercise the same rights, powers, privileges, franchises and immunities as are conferred by the act incorporating the Pennsylvania Company. Section 5 of the latter act (April 7, 1870), provides: "Should the capital stock at any time be increased the stockholders at the time of such increase shall be entitled to a *pro rata* share of such increase upon the payment of the installments thereon duly called for."

The foregoing provision was part of the charter of the Reading Company at the time the preferred stock was issued and no amendment to the charter has ever been made which limits the foregoing rights and privileges of all stockholders, preferred and common alike. It is manifest, therefore, that no distribution of a surplus of the Reading Company by way of a stock dividend could be made without participation therein by the preferred stock. Furthermore, the common stockholders may not seize the surplus to the exclusion of the preferred stockholders by some other method of distribution than a stock dividend.

In the resolutions of the stockholders of the Reading Company, of December 18, 1896, authorizing the First Preferred, Second Preferred and Common Stock, and adopting the forms of certificates thereof, the Reading Company reserves the right, without further consent of the holder, to convert the Second Preferred Stock one-half into First Preferred and one-half into Common Stock. The foregoing provision appears on the face of the Second Preferred Stock Certificate.

No charter amendments of the Reading Company in 1896 were necessary in order to validate the issue of three classes of stock, the issue being authorized by the broad terms of the charter and the existing law.

VI.

Your petitioners aver that the suggested modification of the proposed plan contained in the petition of the common stockholders committee, namely, that the Reading Company reduce its capital stock, such reduction to apply to all shares of the stock of the Reading Company equally, preferred and common alike, is contrary to the terms of the Preferred Stock Certificates which provide that the Reading Company shall have the right at any time to redeem either or both classes of its Preferred Stock at par in cash if such redemption shall then be allowed by law.

Your petitioners submit that there is no legal basis for the theory of the common stockholders committee that a surplus not only belongs to the common stock, but is in the nature of a trust fund which is not subject to the exigencies of the business of the company, but must be preserved at all times intact for the common stock and that for the preservation of such surplus the capital stock of the company may be reduced and that such reduction may apply to issues of preferred stock.

But aside from that point, in the present case, the plan for a segregation of the properties adjudged to be

in unlawful combination, contemplates the shifting of certain assets from the Reading Company to the new Coal Company and the distribution of the beneficial interest in the stock of the Coal Company to the stockholders of the Reading Company, preferred and common, *pari passu*.

The debt of the Coal Company to the Reading Company, as above shown, is a part of the capital the latter company acquired by the issue of its stocks and bonds and the adjustment of that debt according to the plan in no respect constitutes a distribution of surplus income or profits as contended by the Common Stockholders' Committee.

The proposed distribution of stock is in conformity with previous decrees of the federal courts under similar circumstances.

The final decree approved by the Court in the *Union Pacific* case, dated June 30, 1913, in Sec. 5, accorded the preferred stockholders of the Union Pacific R. R. Co. as well as the common stockholders the right to subscribe for certificates of interest representing the Southern Pacific Co.'s shares transferred to the Trustee. (Decrees and judgments in Federal Anti-Trust Cases, p. 221.) Said decree provided as follows:

"Section 5. Prior to November 1, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall offer to all stockholders of the former, common and preferred (registered as such on a date to be designated in the offer and not more than 40 days from its date) or to their assignees, the right to subscribe for certificates of interest representing the said Southern Pacific Company shares transferred to the Trustee as provided hereunder, substantially in the proportion of their respective holdings, with such allowance in fixing the distribution ratio as the above-named defendants may deem necessary for possible conversions of convertible bonds of the said Union Pacific Railroad Company."

The form of the preferred stock of the Union Pacific R. R. Co. is given in "*Equitable L. A. Society v. U. P. R. R. Co.*, 212 N. Y., 360," p. 365. It provided that "the preferred stock shall be entitled, in preference and priority over the common stock to dividends in each year at such rate not exceeding 4 per cent per annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative and *the preferred stock is entitled to no other or further share of the profits.*"

Your petitioners aver that in the *Union Pacific* case the preferred stock certificate, after fixing a non-cumulative rate of dividend "not exceeding 4 per cent per annum," provided that "the preferred stock is entitled to no other or further share of the profits." The latter limitation—"no other or further share of the profits"—is not contained in the preferred stock certificates of the Reading Co. On the contrary, under the charter provisions of the Reading Company above set out, the preferred stockholder is entitled to a *pro rata* share of any increase of the capital stock and this provision would apply in case of a distribution of profits by a stock dividend.

Your petitioners aver that under the Pennsylvania decisions the holders of preferred stock are entitled to participate equally with the common in the subscription to the shares of the Coal Company (*Englander v. Osborne*, 261 Penn. St., 366, May 6, 1918).

VII.

Your petitioners aver that the security behind the Preferred Stock of the Reading Co. will be reduced by the plan of dissolution, owing to the fact that the capital stock of Coal Company and its coal properties are to be released from the lien of the general mortgage, and the Coal Company is to be discharged from liability on the

general mortgage bonds. Under the plan it is proposed to pay the bondholders a premium of 10 per cent to secure such release and discharge. The preferred stockholders, whose security is also reduced, are offered no premium for their consent to the plan. The only inducement to them to consent to the plan is the offer of the right to participate equally with the common stock, a junior security, in the purchase of the stock of the coal company.

Your petitioners pray that the plan be approved as submitted and that thereby the litigation which has continued for many years be terminated.

WHEREFORE, your petitioners respectfully pray that an order may be entered in this cause, granting unto your petitioners as a committee as aforesaid leave to file this petition and to intervene herein and become parties in this action, and your petitioners will ever pray, etc.

ADRIAN ISELIN,
ROBERT B. DODSON,
EDWIN G. MERRILL,
WILLIAM A. LAW,

As a Committee Representing
Holders of First Preferred
and Second Preferred Stock
of the Defendant Reading
Company.

March 15, 1921.

By ADRIAN ISELIN.

CADWALADER, WICKERSHAM & TAFT,
40 Wall Street,
New York City.

GEORGE W. WICKERSHAM,
EDWIN P. GROSVENOR,
of Counsel.

**Amended Petition of the New York Central Railroad Company for
Leave to Intervene.**

(Filed March 15, 1921.)

Comes now The New York Central Railroad Company and, amending its petition for leave to intervene heretofore filed in the above entitled cause, by this its amended petition respectfully shows:

1. Your petitioner is the owner of the following amounts and classes of the capital stock of the Reading Company:

	Number of shares :	Par value :
First preferred.	121,300	\$6,065,000
Second preferred	285,300	14,265,000
Common	197,050	9,852,500

2. The amount of stock so owned by your petitioner is 21.5589 per cent. of the total capital stock of the Reading Company and, because of its large holding, your petitioner is greatly interested in any plan which the Court may approve for a segregation of the assets of the Reading Company.

3. Because of the fact that your petitioner owns a large amount of each class of stock of the Reading Company, it does not feel that it is in a position to join any of the committees which have been formed to represent the different classes of stock.

Nevertheless your petitioner desires to intervene in this cause for the following reasons: Because committees representing respectively common and preferred stockholders are before the court advancing antagonistic views in support of claims made on behalf of said common and of said preferred stockholders respectively and in derogation of the plan heretofore submitted to the

court by defendants Reading Company, Philadelphia & Reading Railway and the Philadelphia & Reading Coal & Iron Company. Your petitioner desires to support said plan and to present independently the facts, arguments and considerations which it deems appropriate in support thereof.

WHEREFORE your petitioner respectfully prays that it may be permitted to intervene in this cause for the protection of its rights.

And it will ever pray, etc.

THE NEW YORK CENTRAL RAILROAD COMPANY,
by P. E. CROWLEY

Vice-President.

ALEX. S. LYMAN

Solicitor for Petitioner.

3109 Grand Central Terminal,
New York, N. Y.

STATE OF NEW YORK }
County of New York } ss.:

P. E. CROWLEY, being duly sworn, says that he is a Vice-President of The New York Central Railroad Company, the petitioner named in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and that the same is true according to his best knowledge, information and belief.

P. E. CROWLEY

Sworn to before me this }
15th day of March, 1921. }

J. M. WOOLDRIDGE

Notary Public, Westchester County

Certificate Filed in New York & Bronx County.

N. Y. Co. Clerk No. 114 N. Y. Register No. 2110

Bronx Co. Clerk No. 12 Bronx Register No. 2222

My commission expires March 30th, 1922

Petition of the Baltimore and Ohio Railroad Company for Leave to Intervene.

(Filed March 15, 1921.)

The Petition of The Baltimore and Ohio Railroad Company respectfully represents that:

1. The petitioner is the owner of \$6,065,000. at par of the First Preferred Stock, \$14,265,000. at par of the Second Preferred Stock, and \$10,002,500. at par of the Common Stock of The Reading Company.

2. The petitioner is vitally interested in the distribution of the assets of the said Company as directed by the Decree of your Honorable Court in the above cause dated October 8, 1920.

Wherefore your petitioner respectfully prays your Honorable Court to permit it to intervene for the protection of its rights.

And it will ever pray, etc.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By DANIEL WILLARD,
President.

H. B. GILL
HUGH L. BOND, Jr.
Solicitor for Petitioner.

STATE OF MARYLAND }
City of Baltimore } ss.

DANIEL WILLARD being sworn according to law, deposes and says that he is the President of The Baltimore

and Ohio Railroad Company, the above Petitioner, and that the facts set forth in the above Petition are true.

DANIEL WILLARD

President.

Sworn to and subscribed to before me this 11th day of March, 1921.

GEORGE W. HANLEENBECK

Notary Public

My commission expires May 1, 1922.

[SEAL]

Petition of William B. Kurtz and Madge Fulton Kurtz for Leave to Intervene.

(Filed March 15, 1921.)

The petition of William B. Kurtz and Madge Fulton Kurtz respectfully represents:

1. Petitioner William B. Kurtz is the owner of four thousand one hundred (4,100) shares of the Second Preferred Stock of the Reading Company; petitioner Madge Fulton Kurtz is the owner of one thousand (1,000) shares of the Second Preferred Stock of the Reading Company.

2. Petitioners are vitally interested in the distribution of the assets of the Reading Company as directed by the decree of the Court entered in this case on October 8, 1920.

Petitioners, therefore, respectfully pray this Honorable Court to permit them to intervene for the protection of their rights.

And they will ever pray, &c.

WILLIAM B. KURTZ

MADGE FULTON KURTZ

Petitioners.

T. R. WHITE

Attorney for Petitioners.

STATE OF PENNSYLVANIA }
 County of Philadelphia } ss:

WILLIAM B. KURTZ, being duly sworn according to law, deposes and says that he is one of the petitioners named in the foregoing petition, and that the facts set forth therein are true.

WILLIAM B. KURTZ

Sworn to and subscribed be-
 fore me this 5th day of }
 January, A. D. 1921. }

ANNA M. LEVY

[SEAL]

Notary Public

Petition of the Penn Mutual Life Insurance Company for Leave to Intervene.

(Filed March 15, 1921.)

The Petition of the Penn Mutual Life Insurance Company respectfully represents that:

1. The petitioner is the owner of \$1,000,000. at par of General Mortgage 4% Bonds of the Reading Company and the Philadelphia & Reading Coal & Iron Company, dated January 5, 1897 and due January 1, 1997.

2. The petitioner is vitally interested in the distribution of the assets of the said Companies as directed by the Decree of your Honorable Court in the above cause dated October 8, 1920.

Wherefore your petitioner respectfully prays your Honorable Court to permit it to intervene for the protection of its rights.

And it will ever pray, etc.

THE PENN MUTUAL LIFE INSURANCE COMPANY,
 By GEO. K. JOHNSON Prest

G. W. PEPPER
 Solicitor for Petitioner.

COMMONWEALTH OF PENNSYLVANIA } ss.
 County of Philadelphia }

GEO. K. JOHNSON, being sworn according to law, deposes and says that he is the President of the Penn Mutual Life Insurance Company, the above petitioner, and that the facts set forth in the above Petition are true.

GEO. K. JOHNSON

Sworn to and subscribed before me this eighth day of March, 1921.

FRANK J. REEVES

[SEAL]

Notary Public

Petition of the Girard Avenue Title and Trust Company to Intervene.

(Filed March 15, 1921.)

TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT
 OF THE UNITED STATES FOR THE EASTERN DISTRICT OF
 PENNSYLVANIA:—

The petition of The Girard Avenue Title and Trust Company respectfully represents:

1. That your petitioner is the owner of nine hundred of the common shares of the Reading Company and of bonds known as the 4% general mortgage bonds of the Reading Company to the amount of \$15000. par value.

2. Your petitioner avers that it is vitally interested in the distribution of the surplus owned by said Reading Company, and is otherwise interested vitally in the distribution and plan proposed in the carrying out of the decree entered in this case.

Your petitioner therefore prays that it be permitted to intervene in this cause of action for the protection of its rights in the premises.

Your petitioner will ever pray

GIRARD AVENUE TITLE & TRUST CO.

By WILLIAM H. GARGES

Secretary.

STATE OF PENNSYLVANIA }
 Eastern District of Pennsylvania } ss.

WILLIAM H. GARGES, having been duly sworn according to law, deposes and says that he is the Secretary and Treasurer of the said The Girard Avenue Title and Trust Company, the above named Petitioner, and that the facts set forth in the foregoing petition are true of his own knowledge.

WILLIAM H. GARGES

Sworn to and subscribed }
 before me this 14th day }
 of March, 1921. }

ANNA M. MELLON

[SEAL]

Notary Public —

I hereby certify that I am not a Director or officer of the above Trust Company.

ANNA M. MELLON

Petition of the Pennsylvania Company for Insurances on Lives and Granting Annuities, et al, for Leave to Intervene.

(Filed March 15, 1921.)

The Petition of The Pennsylvania Company for Insurance on Lives and Granting Annuities, individually and in its capacity as Trustee, Administrator, Executor or Guardian, as the case may be, for an aggregate of 155 estates, person or corporations (List contained in original), respectfully represents:

1. That the petitioner individually and in its various capacities above set forth, is the owner of \$2,041,000. par value of general mortgage 4% bonds of the Reading Company and the Philadelphia and Reading Coal and Iron Company, secured under Indenture of Trust dated January 5, 1897, said bonds being due January 1st, 1997.

2. The petitioner is vitally interested in the distribution of the assets of the said Companies as directed by the decree of your Honorable Court in the above case dated October 8, 1920.

Wherefore your petitioner individually and in its various capacities as above set forth respectfully prays your Honorable Court to permit it to intervene for the protection of its rights.

And it will ever pray, etc.

THE PENNSYLVANIA COMPANY FOR INSURANCES
ON LIVES AND GRANTING ANNUITIES, individ-
ually and in its various capacities as above
set forth.

By C. S. W. PACKARD
President.

STATE OF PENNSYLVANIA }
County of Philadelphia } ss

C. S. W. PACKARD, being duly sworn according to law deposes and says that he is the President of The Pennsylvania Company for Insurances on Lives and Granting Annuities, the foregoing petitioner, and that the facts set forth in the foregoing petition are true.

C. S. W. PACKARD

SWORN to and SUBSCRIBED }
before me this 12th day }
of March, A. D., 1921. }

HARRY BOWER

[SEAL] Notary Public.

My commission expires Jan. 28, 1925

I am not a Stockholder, Director or Officer of within mentioned Corporation.

Petition and Answer of Joseph E. Widener.

(Filed March 15, 1921.)

TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT
OF THE UNITED STATES WITHIN AND FOR THE EASTERN
DISTRICT OF PENNSYLVANIA :

Now comes Joseph E. Widener and craves leave to intervene and to present a separate answer to certain of the intervening petitions and cross-petitions filed herein, and so petitioning and answering respectfully represents:

1. That he is a member of the Board of Directors of the Reading Company and has been such since the final decision and mandate of the Supreme Court in this proceeding.

2. That he is one of the trustees of the Estate of P. A. B. Widener, his father, which estate is the owner of 100,000 shares of the common stock of the Reading Company, or a one-fourteenth part thereof; that in addition to his holding as trustee he is a beneficiary of said estate to the extent of 50 per cent., and is also the owner and representative of an additional substantial amount of the common stock of the Reading Company; that he has no interest directly or indirectly in either issue of preferred stock.

3. That since the entry of the final decree in this proceeding he and his co-directors have earnestly endeavored to formulate a plan for carrying out the mandate of the Court, which plan would command the approval of the Department of Justice and of this Honorable Court, preserve as far as possible the equities of the owners of the different classes of stock and bonds of the Company and be capable of execution in the present disturbed condition of world finances with the least possible loss to any of the interests involved. That the plan heretofore presented to this Honorable Court by the Board of Directors

of the Reading Company has been formulated and submitted after careful and extended consideration as the best method available to meet these ends. That your petitioner as a member of the said Board has approved, and still approves, this plan as submitted.

4. Your petitioner further desires to record his approval of the plan as a common stockholder of the company. He desires however to register a disclaimer and protest with respect to the attempt of certain intervening interests to obtain in this proceeding a construction of the basic contracts between the different classes of stockholders of the Reading Company. Your petitioner respectfully represents that the action contemplated under the present plan for compliance with the mandate of the Supreme Court is in no sense a distribution of current income or surplus profits of the Company, nor of the corporate assets upon abandonment of the joint enterprise undertaken by the stockholders. The present plan merely effectuates, by sale, a return to those who contributed it, of certain corporate property which the Supreme Court has determined that the Reading Company had no legal right to acquire and has no legal right to hold. Such a segregation of property in compliance with the mandate of the Court does not involve any construction of the basic contracts between the different classes of stockholders and the company; it is not a distribution of profit, surplus or corporate property in the customary management of the corporate business.

5. Your petitioner believes that great injustice will result if, in connection with this judicial segregation of property, the decree of your Honorable Court shall in any way place a construction upon the contracts between the several classes of stockholders and the company, defining their rights in customary corporate distributions, or shall identify or designate this special segregation in terms of customary corporate distributions.

6. Your petitioner had originally given to the intervenors known as the "Prosser Committee" and representing the holders of common stock, his power of attorney. He has felt constrained to withdraw that power and to present this separate answer for the reasons stated herein.

Wherefore your petitioner prays that this Honorable Court in its decree in this proceeding will refrain from any judicial construction of the contracts between the different classes of stockholders and the company, which questions of construction, although interjected by the protests of certain interests, are not as your petitioner verily believes in any way raised or involved in this proceeding.

And your petitioner will ever pray.

JOSEPH E. WIDENER.

ELLIS AMES BALLARD,
Solicitor for Petitioner.

BALLARD, SPAHR, ANDREWS & MADEIRA,
Of Counsel.

April 6th, 1921.

Answer of Central Union Trust Company of New York.

(Filed April 12, 1921.)

The defendant, CENTRAL UNION TRUST COMPANY OF NEW YORK (formerly Central Trust Company of New York), as Trustee under the General Mortgage made by the Reading Company and the Philadelphia & Reading Coal & Iron Company, dated January 5, 1897, being made a party hereto, by supplemental bill filed herein under

authority and order of the court, for answer to the bill of complaint and supplemental bill, says :

I. It is stranger to all and singular the matters and things in said bill of complaint contained, and therefore leaves the plaintiff to make such proof thereof as it shall be able to produce.

II. It admits the allegations contained in the supplemental bill of complaint in the paragraphs numbered respectively 1, 2, 3 and 4. As to the allegations contained in the paragraph of the supplemental bill of complaint numbered 5, it begs leave to refer to the Plan therein referred to, and now filed with this court, for the terms and conditions thereof.

**FURTHER ANSWERING THE BILL OF COMPLAINT AND THE
SUPPLEMENTAL BILL OF COMPLAINT.**

III. It asserts and alleges that it has no interest in the stock of the Reading Company, and only such interest in the stock of the Philadelphia & Reading Coal & Iron Company as it has as Trustee under said General Mortgage, and it begs leave to submit to the court the said General Mortgage, or a copy thereof, for the purpose of placing before the court all the terms and conditions thereof, and its rights, duties and obligations as Trustee thereunder.

IV. It asserts and alleges that all of the bonds, the issuance of which is provided for by the said General Mortgage, were not authenticated and delivered at the time of the execution of said General Mortgage, but that bonds thereunder have since such time, pursuant to the terms of and for the purposes prescribed in said mortgage, been authenticated, issued and delivered from time to time up to the year 1920.

V. It further alleges that it is informed and verily believes that the bonds secured by said General Mortgage are numerous and widely scattered, and few of the owners thereof, if any, are in any way identified with the management of the properties of the Reading Company or the Philadelphia & Reading Coal & Iron Company, or either of them, or any of their subsidiaries, and that such management is entirely independent thereof, and that such bondholders have not, nor did they ever have any part in the alleged illegal conspiracy set forth in the bill of complaint herein.

VI. It further alleges that it is informed and verily believes that it is not necessary that the said mortgage or the lien thereof should in any wise be disturbed in order to fully carry out and comply with the mandate of the Supreme Court of the United States in this action, and that in this action, the court is without power to disturb the same.

WHEREFORE, this defendant, having fully answered, prays for relief that no decree shall be entered herein that will in any wise disturb the said mortgage or the lien thereof on any security thereunder, or the security of the holders of bonds secured by said mortgage as in said mortgage provided, and that any decree entered shall recognize the unimpaired validity of said mortgage and the lien and pledge thereby created.

JOHN M. PERRY,
Solicitor for Defendant, CENTRAL
UNION TRUST COMPANY OF NEW
YORK, Trustee.

LARKIN, RATHBONE & PERRY,
Counsel,
80 Broadway,
New York City.

STATE OF NEW YORK, }
County of New York, } ss.:

FREDERIC J. FULLER, being duly sworn, deposes and says that he is an officer, to wit, a Vice President of Central Union Trust Company of New York, the corporation above named; that he had read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

The reason this verification is made by deponent instead of by Central Union Trust Company of New York is that Central Union Trust Company of New York is a corporation, and deponent is an officer of said corporation.

FREDERIC J. FULLER

Sworn to before me this 7th }
day of March, 1921. }

R. C. ROETGER

[SEAL] Notary Public, Westchester County
Certificate Filed in New York County No. 252
New York County Register's No. 2208
Term Expires March 30th, 1922

Answer to Intervening Petitions, and Cross-Petition of Defendant
Reading Company.

(Filed April 5, 1921.)

TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT
OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF
PENNSYLVANIA.

Now comes the defendant Reading Company, answering the intervening petitions filed herein by (1) Seward Prosser, Mortimer N. Buckner and John H. Mason, as a

Committee (hereinafter called the Prosser Committee), (2) Continental Insurance Company and Fidelity-Phoenix Insurance Company of New York, and (3) Frances T. Ingraham, and respectfully represents unto this Honorable Court as follows:

I.

The Reading Company and its board of directors do not offer any objection to intervention in this cause by stockholders of the Reading Company, on the terms hereinafter suggested, though they hesitate to join in the request of the petitioners that they be permitted to intervene, lest such action be misconstrued as calculated to delay the execution of the mandate of this Honorable Court. If, however, the Court should determine to grant permission to the petitioners to intervene, the Reading Company and its board of directors would welcome such action as tending to relieve them of the sole responsibility in a matter which is evidently controversial.

The Reading Company and its board desire that the views of the intervening common stockholders of the Reading Company be considered on their merits and they approach the discussion of them in no contentious spirit. They cannot, however, accept the view that the assertion of conflicting claims on behalf of some of the holders of its common stock relieves the duly elected directors of the Reading Company of the responsibility imposed upon them by law.

No part of the plan submitted to this Honorable Court on February 14, 1921, was adopted without careful consideration. The board of directors of the Reading Company approached the problem from the point of view, first, of obeying the mandate of this Court; second, of avoiding as far as possible the disturbance of existing securities; third, doing justice between existing classes of security holders. The members of the board of direc-

tors of the Reading Company are, and for years have been, for the most part, personally or in a representative capacity, holders of large amounts of stock, preferred or common or both, of the Reading Company. They are advised and believe that this fact, so far from disqualifying them from exercising their judgment, and reaching a determination upon the problems presented by the decree of this Honorable Court, is, in itself, an important qualification. Subject to the overshadowing necessity of responding frankly, promptly and fully to the mandate of this Honorable Court, it has been the primary concern and the guiding principle of the board of directors of the Reading Company, during months of anxious consideration, to devise a plan which should not merely destroy but conserve, not obstruct the Government but re-construct the properties.

The Reading Company and its board of directors have presented such a plan, which, if they are correctly advised, has met the approval of the Government of the United States in every important respect except one. That plan is now before this Honorable Court for consideration. The Reading Company and its board have assumed that that plan and, indeed, any plan which should undertake not merely to tear down but also to re-construct, must be to some extent dependent upon corporate action on the part of the Reading Company by its board of directors and its stockholders. Though in an important sense compulsory because taken under pressure of necessity created by the decree of this Honorable Court, the plan must be regarded as in some sense also voluntary since it requires corporate action not directly involved in the issues in this cause. Accordingly the Reading Company and its board have assumed that if this Honorable Court should approve the plan it would be necessary to call meetings of stockholders of the Reading Company and submit to such stockholders for their consideration proposals for the taking of the

appropriate corporate action to consummate the plan. The Reading Company and its board have not as yet communicated with the stockholders as a body further than to mail to them the plan itself and the brief statement of it hereto annexed marked Exhibit A.

The Reading Company is advised and believes that if this Court should sustain the objections of the intervening common stockholders its decision would be fatal to the present plan, and that the counter-proposals advanced on behalf of those common stockholders are unprecedented and impracticable and, far from putting an end to controversy, would inflame it. The Reading Company and its board of directors believe it to be their duty to oppose the views and proposals presented on behalf of the intervening common stockholders because if their objection were sustained the consequence must be to drive this Court to still more drastic measures than are contemplated by the plan. The consequent great loss and expense must reduce or exhaust the accumulated surplus, and whatever assets remained would, as the Reading Company is informed and believes, in the event of a decree enforcing a more drastic dissolution of the Reading Company, unquestionably be the property of the stockholders, preferred and common, share and share alike, without discrimination or preference. Holding these views as to the interests of the stockholders, and being primarily concerned to conserve their property, the board of directors of the Reading Company, after very careful consideration of the views presented on behalf of the intervening common stockholders, though interposing no objection to the granting of the petitions to intervene and, indeed, welcoming such intervention if approved by the Court, is constrained to oppose the further relief asked on behalf of the intervening common stockholders.

II.

The Reading Company is a corporation specially chartered under the laws of Pennsylvania prior to the adoption of the Constitution of 1874, with particularly broad powers. It was originally known as Excelsior Enterprise Company. A copy of its charter and of the charter of the Pennsylvania Company therein referred to is hereto attached marked Exhibit B. The Reading Company is not a common carrier and is not subject to regulation by Federal or State authorities having jurisdiction over railroads. The Reading Company has outstanding capital stock as follows:

4% non-cumulative First Preferred Stock	\$28,000,000.00
4% non-cumulative Second Preferred Stock	42,000,000.00
Common Stock	70,000,000.00
<hr/>	
Total Capital Stock.....	\$140,000,000.00

Copies of the stock certificates are hereto attached marked Exhibits C, D and E.

The Reading Company now owns all the stock (par value \$42,481,700) of the Philadelphia and Reading Railway Company (hereinafter called the Railway Company), and all the stock (par value \$8,000,000) of The Philadelphia and Reading Coal and Iron Company (hereinafter called the Coal Company).

The Reading Company and the Coal Company are joint obligors under a General Mortgage to Central Trust Company of New York, Trustee, dated January 5, 1897 (hereinafter called the General Mortgage). The General Mortgage Bonds mature January 5, 1997, bear interest at 4%, and are the joint obligations of the two companies. Bonds to the amount of \$96,524,000 (including \$2,831,000 in the Treasury) were outstanding December 31, 1919, and on December 31, 1920, there were outstanding \$95,980,000

of which \$2,711,000 were in the Treasury of the Company. The properties mortgaged and pledged under the General Mortgage include the properties of the Coal Company, the railroad equipment and certain real estate owned by the Reading Company, all the stock of the Coal Company and of the Railway Company, and certain bonds of the Railway Company.

The Reading Company now owns stock of the Central Railroad of New Jersey (hereinafter called the Jersey Central) to the par amount of \$14,504,000, which constitutes more than a majority of its stock. All the stock of the Jersey Central (except 40 shares) owned by the Reading Company is pledged under the Jersey Central Collateral Trust Mortgage of Reading Company to the Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee, dated April 1, 1901. The bonds issued under this mortgage bear interest at 4%, mature April 1, 1951, and are redeemable before maturity at 105 per cent. of the par value thereof and accrued interest. Bonds to the amount of \$23,000,000 are issued and outstanding.

Prior to 1896 the Reading Company was an inactive corporation, with an authorized capital stock of \$100,000. Its charter had been kept alive and was in the possession of The Philadelphia and Reading Railroad Company (hereinafter called the Railroad Company). In 1896 a reorganization of the properties of the Railroad Company and the Coal Company became necessary by reason of the foreclosure of the General Mortgage of said companies.

The reorganization plan dated December 14, 1895, was formulated by a Committee composed of the following gentlemen: Frederic P. Olcott, Adrian Iselin, Jr., J. Kennedy Tod, Henry Budge, Thomas Denny, George H. Earle, Jr., Sidney F. Tyler, Samuel R. Shipley and Richard Y. Cook. Its Counsel were F. W. Whitridge, John G. Johnson and George L. Rives. The Depositaries under the plan were J. P. Morgan & Co., New York, Drexel & Co.,

Philadelphia, and J. P. Morgan & Co., London. Their Counsel was Francis Lynde Stetson. In the Agreement dated December 14, 1895, to which the plan was prefixed, J. P. Morgan & Co. were designated Managers. The reorganization plan provided for the issue of general mortgage bonds, preferred stock and common stock, as follows:

"1. General Mortgage 100-year 4% Gold Bonds.

* * * * *

2. Non-cumulative 4% First Preferred Stock for \$28,000,000, subject to an increase of \$21,000,000, as hereinafter stated, for substitution for Second Preferred Stock. The First Preferred Stock will entitle the holders to non-cumulative dividends up to 4 per cent. per annum, payable out of net earnings before any dividends shall be paid on the Second Preferred or the Common Stock.

3. Non-cumulative, 4% Second Preferred Stock for \$42,000,000, which will entitle the holders to non-cumulative dividends up to 4 per cent. per annum, payable out of net earnings before any dividends shall be paid on the Common Stock.

4. Common Stock for \$70,000,000, subject to an increase of \$21,000,000, as hereinafter stated, for substitution for Second Preferred Stock.

* * * * *

Provision will be made that at any time after dividends at the rate of 4 per cent. per annum shall have been paid for two successive years on the First Preferred Stock, the New Company may convert the Second Preferred Stock at par, one-half into First Preferred Stock and one-half into Common Stock."

The properties formerly of the Railroad Company and the Coal Company were sold under foreclosure and bought in by Charles H. Coster and Francis Lynde Stetson, who acted by arrangement with the Managers. The securities

issued by the Reading Company in connection with the reorganization plan (all the preferred stocks and common stock now outstanding and \$50,369,000 principal amount of General Mortgage Bonds) were issued against the acquisition of the properties of the Railroad Company and the Coal Company sold under the foreclosure decree and were exchanged for outstanding securities of the Railroad Company or sold to provide the cash necessary for organization purposes.

The General Mortgage dated January 5, 1897, under which the General Mortgage Bonds so provided for in the plan were issued, provides as follows:

"Sec. 2. Of the bonds authorized to be issued under and secured by this indenture, bonds to the amount of fifty million three hundred and sixty-nine thousand dollars (\$50,369,000), immediately upon the execution or delivery hereof, or as soon as may be thereafter, shall by the Trustee be certified and delivered to the firm of J. P. Morgan & Co., or their survivors or successors, as Reorganization Managers, without accountability by said firm, or such survivors or successors, for the disposition or use thereof."

On the balance sheet of the Railroad Company for November 30, 1896, the item "Investment in P. & R. Coal & Iron Co. \$70,358,996.01," was carried as an asset. The purchasers conveyed the railroad to the newly organized Railway Company, the railroad equipment and various securities to Reading Company, and the coal properties to the Coal Company. The "Deed, Charles H. Coster and Francis Lynde Stetson to The Philadelphia and Reading Coal and Iron Company, dated November 18, 1896", contained the following recital:

"AND WHEREAS, The parties of the first part did also purchase, and now own and possess certain claims or demands for an aggregate principal sum exceeding \$69,000,000 formerly of The Philadelphia

and Reading Railroad Company against the party of the second part, as follows, to-wit:

- (1) A mortgage bond of the party of the second part, dated July 1, 1874, for the sum of \$30,000,000.00
- (2) A mortgage bond of the party of the second part, dated December 28, 1876, for the sum of 10,000,000.00
(Subject to all prior charges and claims against said two mortgage bonds.)
- (3) Loan account, representing cash advances 24,879,336.16
- (4) Current business account, approximating 4,300,000.00

AND WHEREAS, It is the desire and intention of the parties hereby to vest in and to transfer to the party of the second part the titles to the several properties hereinafter described, free and discharged from the four claims before mentioned, which four claims (subject to a prior pledge of said two mortgage bonds) are hereby transferred to the party of the second part;”

These claims composed the item “Investment in P. & R. Coal & Iron Co.” mentioned above. Although these claims were extinguished, these items were carried on the balance sheets of the Reading Company and the Coal Company as of December 1, 1896, and have been so carried ever since, the exact amount varying as certain advances were made by the Reading Company or repayments by the Coal Company. The amount now carried is approximately \$70,000,000.

As long as the Reading Company held all the stock of the Coal Company, this was only a matter of bookkeeping and made no real difference in the financial status of the two companies. The cancellation provided for by the proposed plan is therefore only a rectification of the bookkeeping.

The view taken by the Reading Company of this matter is not uncontroverted. But it is not material for the purposes of the discussion with the intervening common stockholders whether the item is a genuine debt or not, for the Reading Company does not question the fact that the book value to the Reading Company of its investment in the Coal Company on December 31, 1920, was \$77,357,017.99. The principles here involved will not, therefore, be affected by any discussion of the genuineness of this item. To this extent the Reading Company finds itself in accord with the views expressed in the first brief submitted on behalf of the Prosser Committee.

III.

The coal stock is to be *sold*. There is to be no dividend or distribution of the coal stock. The situation is not such as to justify declaring a dividend in respect of the coal stock. No extraordinary dividend has been or will be declared by the Reading Company. The common stockholders cannot force a dividend nor can the sale be treated as if a dividend had been declared. The loss in book value from the sale could, if it were necessary, be charged against the Reading Company's profit and loss surplus without creating any valid claim for preferential treatment of common stock. The sale is compulsory and will result in a loss, not a profit.

The book value of the coal property on the books of the Reading Company, taking the par amount of the stock plus the nominal amount of the above-mentioned claim, as of December 31, 1920, was \$77,357,017.99. As of December 1, 1896, it was \$76,154,678.99.

The aggregate consideration to be received by the Reading Company against the coal property in bonds and cash (out of which must be provided a sum not exceeding \$9,400,000 for payment to the General Mortgage bond-

holders who accept the offer contemplated by the plan) is as follows:

Cash and cash assets from Coal Com- pany	\$10,000,000.00
4% Mortgage Bonds of Coal Company at par.....	25,000,000.00
Cash from stockholders.....	5,600,000.00
Total	\$40,600,000.00

This consideration is less than it is hoped will prove to be the intrinsic value of the coal property. It is, however, a substantial, not a nominal, consideration and is in the judgment of the board of directors of the Reading Company adequate for the requirements of the Reading Company. In view of the fact that a good part of the anthracite coal fields in the country are actually or potentially on the market, that the General Mortgage is, for the time being at least, an incumbrance upon the property, that the earning power of the coal property under independent management remains to be demonstrated, and that stockholders of the Reading Company cannot become owners of the coal stock itself, though they may purchase certificates of interest provided for in the plan, it is believed that the coal stock cannot be sold under pressure of the decree in this cause for a sum as great as its book value.

It is evidently impracticable to ascertain the market value of the coal stock under these conditions without offering it for sale. An appraisal would be of no use whatever under the circumstances. The Reading Company is under the necessity of making an actual disposition of the stock and no theoretical valuation of appraisers or experts could be of the least service unless they were willing and able to back the appraisal with a bid.

The coal stock is being sold for less than its book value and it is not asserted on behalf of the intervening common

stockholders that it can be sold for as much as its book value. The sale results in a loss on the books of the Reading Company, yet the intervening common stockholders ask that it be treated as a distribution of profits and that the preferred stockholders be excluded from participation in the purchase on that theory. It is, however, entirely clear that, though the intervening common stockholders may object to the Reading Company's taking the loss, if they are prepared to make or suggest a better offer, they cannot have it treated as a profit entitling them to exclusive participation, as in the case of dividends from current profits in excess of 4%.

If the stockholders believe that the Reading Company should realize a larger value for the property, and indicate to the Board their desire to pay a larger price for it, such an offer would receive the careful consideration of the Board. If, however, upon consideration the stockholders are satisfied with the price fixed by the Board, neither class can complain on the ground that the other has not been excluded from participation in the purchase. If the intervening holders of common stock object to having certificates of interest in the coal property sold to the preferred and common stockholders ratably, the remedy of the common stockholders is to offer a higher price, with the right to the preferred stockholders to bid against them; or to ask the court to require that the certificates of interest be sold at public sale to the highest bidder, with the right to the stockholders, preferred and common, singly or in groups, and to the general public, to bid.

IV.

The thing to be sold, the stock of the Coal Company, is a capital asset, and not in any sense earnings or profits of the Reading Company. The book value to the Reading Company of its investment in the coal property is not materially greater than it was twenty-five years ago on

the reorganization of the Reading Company. It is not alleged that its present market value under the circumstances above indicated is more than its book value. It is idle to argue that the Coal Company has undistributed earnings and that these are the property of the owners of the common stock of the Reading Company, since the aggregate market value of the coal property, including undistributed earnings if any, is not alleged to be more than the book value to the Reading Company.

Copies of the balance sheet of the Coal Company as of December 31, 1920, and of its income accounts from December 31, 1915, to December 31, 1920, are hereto annexed marked Exhibit F.

V.

Even if the sale of the coal stock reduced or wiped out the surplus of the Reading Company, that fact would not in any manner alter the rights of the stockholders in respect of such sale or make such sale a distribution of the surplus of the Reading Company. It is the nature of the asset disposed of, and the method of its disposition, not the effect of such disposition on the books of the corporation, which fixes the rights of stockholders in respect of such disposition. The earnings of any corporation are part of its general assets, are at the hazard of the business, and can be used for any number of corporate purposes of which the payment of dividends is only one. Common stockholders have no right in earnings until that right has been created by the declaration of a dividend and they have no right to require a dividend to be declared in the absence of bad faith on the part of the Board of Directors.

VI.

The capital of the Reading Company will remain unimpaired. Upon the consummation of the plan the assets of the Reading Company will exceed the aggregate

of its capital stock and liabilities by an amount in excess of the present surplus of \$33,000,000, as more fully appears under VII. There can be no reduction of capital stock, preferred or common, except with the consent of stockholders required by the statute, or as provided in the contract, when the capital is unimpaired and is required for use in the business. The only way to reduce the preferred stock without its consent is to redeem it in accordance with the terms of the contract in the stock certificates. Funds are not available for that purpose.

If it had appeared that the market value of the coal stock under the existing circumstances was as great as many believe its intrinsic value to be, much could have been said in favor of a proposal to convert the second preferred stock one-half into first preferred and one-half into common, redeem at par the first preferred stock, which would then amount to \$49,000,000, and sell the coal stock to the holders of the common stock, which would then amount to \$91,000,000, for a sum sufficient to provide for such redemption in addition to the other cash requirements of the plan. Such a plan would have been contingent upon selling the coal stock, or certificates of interest in it, under an arrangement by which the proceeds of sale would not be deposited under the General Mortgage but would be applied to the redemption of the preferred stock, a junior security. Under the actual conditions now existing it did not appear to the Board of Directors that such a plan was fair, wise or feasible.

The participation of the preferred stock in current dividends is limited to a rate per cent. of capital. The reduction of the preferred stock would therefore reduce the dividends payable to the holders of preferred stock. The dividends on the common stock, on the other hand, are not limited to a rate per cent. of capital. The reduction of the common stock would not therefore reduce the amount payable in dividends to the common stock, but in fact might result in making possible somewhat higher divi-

dends on common stock in consequence of the reduction of dividends on preferred stock as above explained.

The proposal to reduce the capital stock does not, however, for practical reasons commend itself to the Reading Company. It will not, it is believed, commend itself to the common stockholders themselves. Even if it be assumed that the market value of the coal stock is more than the selling price under the plan, it is the difference between the selling price and the market value, not the difference between the selling price and the book value, as seems to be assumed by the intervening petitioners, which is the real subject of contention. If it be assumed, merely for illustration, that the certificates of interest in the coal stock provided for in the plan could be sold for cash in an amount greater by as much as \$7,000,000 than the price fixed by the plan, then under the intervenors' proposal the capital stock, preferred and common, should be reduced by \$7,000,000, or 5%. The aggregate par value of every stockholder's holdings would be scaled down 5%. The aggregate capital stock of the company would be reduced from \$140,000,000 to \$133,000,000. Every holder of a hundred share lot, or \$5,000 par value of the stock, preferred or common, would receive certificates for an "odd lot" of shares, namely, 95 shares of the par value of \$4,750. In order to avoid the issue of fractional shares, it would be necessary to issue scrip for fractions. Every holder of a number of shares not a multiple of five would receive scrip for a fraction of a share, carrying no voting rights and no dividends until assembled in amounts aggregating one full share. The aggregate annual dividend regularly paid on preferred stock (4% on \$70,000,000) is \$2,800,000, and the annual dividend paid on the common stock (8% on \$70,000,000) is \$5,600,000. The consolidated net earnings of the Reading Company and the Railway Company for the year 1920, after deducting interest, taxes and the preferred dividend, were approximately \$9,500,000. The effect of the

reduction of the capital stock proposed in the plan would be to reduce the aggregate amount payable by way of dividend to the preferred stock by \$140,000, and theoretically make a similar amount available for dividends on the common stock. It is improbable, however, that this increase in the amount theoretically available for distribution to the common stock would be sufficiently important to result in any actual increase in dividends to the common stock.

The foregoing figures are given merely for illustration. The defendant Reading Company does not know what the intervening common stockholders think the real market value of the coal property is. If, however, it be assumed that the market value is greater than the selling price, then the difference between the market value and the selling price is the amount which, in the view of the intervening common stockholders, should be deducted from the capital stock, preferred and common, of the Reading Company. Of that amount, whatever it is, one-half would fall upon the preferred stock. 4% of that one-half is the amount of the dividend which would be lost to the preferred stock under such proposal and therefore theoretically available for the common stock. It is not believed that upon any probable calculation of the market value of the coal stock, the amount so taken away from the preferred stockholders and transferred to the common stockholders in annual dividends would be of sufficient importance to counter-balance the disadvantage, even to the common stockholders themselves, of having the capital reduced.

Furthermore, from the point of view of taxation and from the point of view of rate and wage questions, the Reading Company ought rather to increase its capital stock than to decrease it. A decrease in the share capital and an attempted increase in the rate of dividend could only result in injuring the position of the company as towards taxing authorities, rate-making bodies, the travel-

ling public and its own employees. There is nothing in the situation to require it, and in the judgment of the Reading Company no class of stockholders would in the long run benefit by it.

VII.

The book surplus of the Reading Company will not be impaired. The book loss from the sale of the coal stock will be more than made up by taking up on the Reading Company's books in connection with the plan, the value of the railway property, as shown on the books of the Railway Company.

The Prosser Committee in their original petition, and again in their amended and supplemental petition, assert that the effect of carrying out the plan is to distribute to the preferred stockholders ratably per share with the common stockholders a surplus of upwards of \$33,000,000, accumulated by the Reading Company from the undivided net profits arising from its business, and that this surplus with the exception of a small part thereof, which the holders of the preferred stocks might assert could not be distributed to the common stock because dividends during the years in which it was earned were not fully paid on the preferred stocks, belongs under the circumstances here obtaining to the holders of the common stock, to the exclusion of the holders of both classes of preferred stock.

But the plan contemplates taking up on the books of the Reading Company the value of the Reading Company's investment in the railway as shown on the books of the Railway Company which will more than counterbalance what it will be necessary to write off its investment in the Coal Company under the plan. So that in fact the surplus of the Reading Company, after the consummation of the plan, will be much greater than \$33,000,000. An actual balance sheet of the Reading Company and of the Railway Company as of December 31, 1920, together with

a consolidated balance sheet of the Reading Company as it would have been at that date if the transactions contemplated by the plan had then been fully consummated, is hereto attached marked Exhibit G. An affidavit dated April 5, 1921, of the President of the Reading Company and the Railway Company in relation to such balance sheets is hereto attached marked Exhibit H.

The Prosser Committee in their amended and supplemental petition assert that the surplus to which they say the common stockholders are exclusively entitled is not merely the "surplus of upwards of \$33,000,000 accumulated by the defendant Reading Company from the undivided net profits arising from its business", but that to that surplus must be added "all of the surplus which will be created in said company by the merger of it with the Philadelphia & Reading Railway Company", and that such surplus is the exclusive property of the common stockholders. The allegation in the amended and supplemental petition is made somewhat clearer by the statement in a brief submitted in support of it, showing a balance sheet of the Reading Company after merger with the Railway Company but before divesting the coal properties, giving a surplus of \$76,994,672.

The position taken in the Prosser Committee's original petition that the surplus of \$33,000,000 accumulated by the defendant Reading Company from the undivided net profits arising from its business would be impaired by the consummation of the plan was in fact, as it could only be, sustained by ignoring the effect on the balance sheet of the Reading Company's merger with the Railway Company. Similarly the revised position of the Prosser Committee that the surplus which they say belongs to the common stockholders exclusively is not \$33,000,000 but \$78,000,000, can only be sustained by disregarding the effect on the Reading Company's surplus of the portion of the plan which provides for divesting the Reading Company of the coal properties.

Much is said by the intervening common stockholders about the order in which the various steps contemplated by the plan are to be carried out. The Reading Company has not intended to propose for the consideration of the court any particular order of events and has assumed that if the plan meets with the Court's approval it would be content to leave to the Reading Company the determination of the order. The plan is an entirety, one and indivisible, and must stand or fall as a whole.

The effect of the plan would be, not to decrease the surplus of the Reading Company, which is \$33,000,000, not \$78,000,000, but to increase it, because under the plan the Reading Company will take up on its books the value of its investment in the railway as now shown only on the books of the Railway Company; and, *on the Reading Company's books*, the increase of the value of its railway investment will more than counter-balance what it writes off on account of its investment in the coal properties.

The foregoing detailed discussion of the question of bookkeeping would seem necessary in order to make clear the actual situation. There can be no doubt that the books of the Reading Company after the consummation of the plan will show no impairment of capital or surplus, but an actual increase of surplus. This is purely a bookkeeping matter as presented by the intervening common stockholders. It has been necessary to rebut their view of the effect on the books because if in fact the effect of the plan on the books of the Reading Company would be to infringe upon its capital that of itself would constitute an objection to the plan worthy of serious consideration.

VIII.

The accumulated surplus of the Reading Company has been ploughed back into the property and is not in form available for current dividends.

Likewise, the surplus of the Railway Company is not,

and the greater part of it cannot at this late date be made into, earnings or profits of the Reading Company. No profit is being realized by the Reading Company in connection with the plan, and it is not useful to consider what would be the case if the Railway were being sold at an actual profit or if its surplus reached the Reading Company's treasury by way of dividend from the Railway Company. No such dividend has been or could properly be declared.

The Railway's surplus has been to a large extent ploughed back and become unavailable for dividends in fact and in law. The annual report of the Railway Company for the year ending June 30, 1910, contains the following statement:

"By command of the Interstate Commerce Commission, we are required to capitalize all betterments and additions which have been paid for out of income since June 30, 1907.

"The line drawn between renewals and repairs chargeable to Expense Account and Improvements is forcibly illustrated by the ruling on replacements of rails in tracks. If the old rail weighed sixty pounds and the new weighs ninety pounds, one-third of the cost of the new rail must be capitalized. The item on the assets side of the Balance Sheet, amounting to \$4,814,042.76 is the result of the Commission's order. With no counter entry on the liability side of the Balance Sheet, this sum would go to increase 'Profit and Loss.' Some of the railroad companies accept this result. It swells their surplus and has the appearance of wealth. But it seems to your management both misleading and dangerous. Increasing 'Profit and Loss' in this way will again tempt, as it has done in the past, the declaration of large stock dividends, thereby swelling capital on which earnings are to be made. To prevent misleading investors and stockholders, we have decided not to include this in 'Profit and Loss,' but to make the counter entry on the Balance Sheet: 'Appropriated surplus; expenditures on property since June 30, 1907, and charged as an asset.'"

This practice has been continued and the balance sheet of the Railway Company for December 31, 1920 (Exhibit F), shows the following items:

Additions to Property Through In-	
come and Surplus.....	\$53,451,156.59
Profit and Loss.....	10,276,169.32

While it is possible that the Railway Company might now be permitted to issue stocks or bonds for the amount of the appropriated surplus and declare them or their proceeds out as dividends, the fact remains that no such thing has been done or is contemplated and that the appropriated surplus has been ploughed back into the property and has become part of its corpus. It has been spent for the enlargement of the plant and for the increase of facilities. It has been so woven into the warp and woof of the structure as to have become an integral part of it.

Hereto attached marked Exhibit I is a statement giving the working assets and current liabilities of the Reading Company and of the Railway Company before the consummation of the plan, and, in a separate column, the working assets and current liabilities of the Reading Company assuming the consummation of the plan, all as of December 31, 1920. This statement shows clearly that the items carried as surplus on the books of the Reading Company and the Railway Company represent earnings turned back into the property and unavailable for dividends.

IX.

If, however, contrary to the views above expressed, the plan were to be regarded as involving a distribution of surplus, as is contended by the Prosser Committee, the preferred stockholders should not with fairness, and could not rightfully, be excluded from participation in it, because it would be neither a dividend nor a voluntary distribution of current surplus net profits.

The Reading Company is advised and believes that the holders of the preferred stock are entitled to a preference and are subject to a limitation of four per cent. per annum with respect to dividends from current profits of the Reading Company; but that they are entitled to no preference and are subject to no limitation with respect to distribution either of capital or of accumulations of profits which, for any reason, have become part of the capital or partake of the nature of capital and are not being detached therefrom by any voluntary act of the Company but only by a compulsion that makes such detachment a distribution of assets in partial liquidation of the corporation.

The charter of the Reading Company and its stock certificates constitute the contract between the Reading Company and the stockholders and between the stockholders *inter sese*, and, except as otherwise expressly provided in that contract, the holders of the various classes of stock of the company, first preferred, second preferred, and common, are, as the Reading Company is advised and believes, in all respects, and without limitation or preference, stockholders of the Reading Company and as such entitled to full voting power and to full participation in earnings and assets. That contract makes specific provision as to the creation of mortgages, increase of preferred stock, redemption of preferred stock and conversion of second preferred stock. It makes thoughtful and comprehensive provision with respect to the rights of the stockholders *inter sese* and as towards the company, as was to be expected in view of the importance of the Reading reorganization in 1896 and of the eminence of the counsel in charge of it. For the provisions with respect to the collateral matters above referred to reference is made to the copies of the stock certificates hereto annexed marked Exhibits C, D and E. The provisions with respect to dividends are of such importance that they are quoted at length:

From the First Preferred Stock Certificate:

The First Preferred Stock is entitled to non-cumulative dividends at the rate of, but not exceeding, four per cent. per annum, in each and every fiscal year, in preference and priority to any payment in or for such fiscal year of any dividend on other stock; but only from undivided net profits of the Company when and as determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom. If, after providing for the payment of full dividends for any fiscal year on the First Preferred Stock, there shall remain any surplus undivided net profits, the Board out of such surplus may declare and pay dividends for such year upon the Second Preferred Stock. If, from the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

From the Second Preferred Stock Certificate:

The Second Preferred Stock is entitled to non-cumulative dividends, at the rate of, but not exceeding, four per cent. per annum, in each and every fiscal year, in preference and priority to any payment in or for such fiscal year of any dividend on the Common Stock; but only from undivided net profits of the Company remaining after providing for the payment of the full dividends for such fiscal year on the First Preferred Stock, when and as such undivided net profits shall have been determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom. If, from

the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

From the Common Stock Certificate:

The Common Stock is subject to the prior rights of holders of all classes of Preferred Stock at any time outstanding, according to the preferences thereof. If, from the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

It may fairly be stated that under this contract, the surplus of the Reading Company falls into three parts:

(1) Current surplus net profits from the business of the particular year, excluding undivided net profits remaining from previous years.

Out of such surplus, dividends at the rate of but not exceeding 4% may be paid on the preferred stocks, and,

after providing therefor, dividends at such rate as the board may determine may be declared on the common stock, to the exclusion of the preferred.

(2) Surplus accumulated in years when 4% dividends were not paid on the preferred stock.

This is covered by the last sentence in the passage above quoted from each stock certificate, viz: "But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock."

(3) Surplus accumulated in years when 4% dividends were paid on the preferred stock but the dividends declared on the common stock did not exhaust the then current surplus.

The contract makes no express disposition of surplus so accumulated. Naturally, therefore, while part of the undisposed of property of the company, it is subject to the general rule which makes it the property of all the stockholders, preferred and common, share and share alike, available for equal distribution among them either upon dissolution of the company or its final or partial liquidation; subject, however, to the right of the company, under equitable conditions, to eliminate the preferred stockholders as sharers therein by redeeming the preferred stock at par.

The situation thus created by the charter and the stock certificates of the Reading Company is orderly, well balanced, coherent and complete. One-half of the capital stock is preferred and one-half common. For the election of directors, and upon all other matters except as otherwise expressly provided in the stock certificates, preferred and common stock have equal voting powers. Under the charter (Exhibit B) and also at common law as interpreted by the Courts of Pennsylvania, in the case of any increase of capital stock, preferred or common, whether

by way of dividend or sale, the holders of the capital stock, preferred and common, would have the preemptive right to participate therein *pro rata* without discrimination or preference, thus enabling them to protect their relative voting power and interest in the assets. Current earnings are appropriated, first to the payment of 4% dividends on the preferred stock, and thereafter to the payment of such dividends, if any, as the Board of Directors may determine, to the holders of the common stock. In respect to current earnings, the preferred stock has a preference up to, but not exceeding, 4% to the exclusion of the common stock. Preferred stock has, however, no right to receive 4% dividends from current earnings, and the decision of the Board of Directors not to pay any dividends at all or to pay dividends of less than 4% on preferred stock is conclusive and binding upon the preferred stock. This right was exercised over a period of years after the reorganization in 1896. After the payment of 4% dividends on the preferred stock from current earnings, the common stock has a right to receive dividends to such amount as the Board of Directors may declare from current earnings to the exclusion of the preferred stock. But the common stock has not right to receive any dividends at all from current earnings unless the Board of Directors shall declare them, nor in any greater amount than the Board shall legally declare, and the decision of the Board of Directors as to the amount of these earnings which, after the payment of the 4% dividends on the preferred stock, shall be declared as dividends to the common stock, is also conclusive and binding upon the common stock. Just as the inchoate right of the preferred stock to receive 4% dividends in preference to the common stock is of no avail with respect to those years from the current earnings of which such dividends are not in fact declared, so the inchoate right of the common stock to receive dividends from any current earnings, remaining after payment of the 4% preferred stock divi-

dends, is of no avail with respect to those years from the current earnings of which dividends are not in fact declared to them.

In both cases the decision of the Board of Directors is final and binding, and the surplus net profits, of any year, which the Board of Directors has not determined to declare out for dividends, become part of the general assets of the Company which, in the case of any extraordinary distribution in the nature of a partial liquidation of the company, are—as between preferred and common stockholders—subject to no preference but are distributable to them share and share alike, without discrimination and without priority or limitation of right.

As to this the determination of the Board of Directors is conclusive, and whatever part of the current surplus the Board of Directors determines shall be retained as necessary for the conduct of the Company's business or turned back into the property for its betterment or improvement or added to its "plant" in the enlargement of those facilities in which the Company's capital is invested, becomes, by their determination and because of their determination, segregated for capital uses—uses inconsistent with a use for dividend purposes and not subject to the rules applicable to available dividend funds—and its status so lawfully created and with such a wise and prudent purpose cannot be changed without the specific and explicit determination of the Board that it shall be so changed.

It cannot be fairly contended that, under the compulsion of a power superior to the Company, forcing the latter to part with a material and important part of its "plant" or its assets segregated for and devoted to capital uses, there has been, or is intended to be, either in fact or in law, any such determination by the Board as is required to change that status.

It was doubtless not thought probable that such surplus so reserved and so segregated would ever have to be made the subject matter of a dividend; but it was, how-

ever, well known and clearly understood by all that, in the case of dissolution or liquidation of the company, the assets belonged to the stockholders, preferred and common, share and share alike; and it is only a natural and plain corollary of this that, in the event—deemed so unlikely—of some uncurrent distribution not in the nature of a dividend, not declared as a dividend and compulsorily made in spite of a determination not to declare a dividend, the assets so parted with, being assets which, in the case of a liquidation or dissolution of the company, would by plain and explicit provision go to the stockholders, preferred and common, share and share alike, should go precisely the same way in case of a partial liquidation even though no dissolution occurred. The protection thus accorded to the preferred stockholders against having accumulated assets in such event diverted to the common stockholders exclusively, was accompanied by a provision well calculated to prevent being turned to their undue profit what was intended for their protection only; viz: provision permitting the Company to redeem the preferred stock for cash at par.

The Reading Company does not wish to prejudice or prejudge the rights of the stockholders, preferred or common, as to the present situation or any future situation which may arise in the conduct of the affairs of the Company. It does assert, however, with confidence that the foregoing interpretation of the contract is properly applicable to the situation presented by the present plan, which plan is designed and intended to carry into effect the mandate of the Supreme Court of the United States requiring at least a partial liquidation of the assets of the Reading Company to the extent that it requires it to dispose of its interest in the stock of the Coal Company.

X.

The application to the New York Stock Exchange for listing the stock of Reading Company (Listing Statements, New York Stock Exchange, Vol. 7, A2986 Oct. 15,

1904) contains the following statement declaratory of the common law :

"The Preferred and Common Stocks have equal voting power and in liquidation or dissolution of the corporation will share equally in *pro rata* distribution of assets."

The Supreme Court directed the dissolution of the combination between the Railway Company and the Coal Company. The instrument of that combination was the Reading Company, a holding company specially chartered under the laws of Pennsylvania. The plan, if carried into effect, would dissolve the combination and deprive the Reading Company of its extraordinary powers and of its coal properties. It has been contended with much force that the preferred stockholders cannot under these circumstances be compelled to continue their investment in any part of the enterprise subject to the 4% limitation and that under the circumstances created by the decree in this case the proper course would be to distribute the stocks of both the Railway and Coal Companies, which would put the preferred stockholders in the position of common stockholders of the Railway Company, and would relieve them of the 4% limitation on their participation in current earnings. As far as the Reading Company is informed, they have acquiesced in the plan, doubtless believing it to be a fair compromise and believing that, because it leaves existing outstanding securities undisturbed, it will best promote in the long run the interests of all concerned. The Reading Board is informed and believes that it could not properly or lawfully go further and exclude the preferred stockholders from participation in the purchase of the coal property.

Not only is it proper to permit the preferred stockholders to participate in the purchase, but they have a right *not* to be excluded unless redeemed. They share a right with the common stock to purchase these assets, which

constitute a part of the original enterprise, unless they are sold at public or private sale at the best price obtainable. The enterprise in which they originally embarked their capital was that of the Reading Company as the owner of both the railroad and coal properties. They hazarded their capital in the joint enterprise and accepted the limitation upon their participation in profits in reliance upon the security afforded to them by the Reading Company's capital investment in both properties. If it is true that the Reading Company is disposing of the coal stock for less than its market value, and they are excluded from participation in the purchase, they could legitimately object to being compelled to continue their investment in the railroad property, subject to the limitation of 4%, after being deprived of the security afforded by the investment in the coal property, without the Reading Company obtaining its full equivalent. Preferred stock cannot be deprived of the security afforded by the Reading Company's entire assets except by the declaration of a dividend from profits. No profit, but on the contrary a loss, results to the Reading Company on the transaction. The Reading Board has not declared any dividend and the facts do not justify the declaration of an extraordinary dividend.

XI.

Defendant Reading Company, holding the foregoing views, which lead it to the conclusion that it is unnecessary to determine the answer to the question, presented on behalf of intervening common stockholders on the one hand and preferred stockholders on the other, concerning the rights of the preferred and common stockholders in respect to dividends from accumulated surplus—a question which it has never been called upon to decide for it has never drawn upon accumulated surplus for dividends upon the common stock—and believing that the Reading

Company and its board, representing as they do all classes of stockholders of the company, should not, unnecessarily, express an opinion upon this question concerning the basic contract between the stockholders, refrains in this answer from any such expression, suggesting merely that, if the Court should grant the petition to intervene of any stockholders, it grant the petitions of all, to the end that the conflicting views of stockholders upon this important though, as defendant Reading Company is advised and believes, irrelevant question may be before the Court.

XII.

This defendant, on information and belief, denies each and every allegation of said petitions, insofar as such allegations are inconsistent with the statements and allegations herein contained.

XIII.

Defendant Reading Company has not undertaken in this answer to deal at length with the various modifications of the old plan or the new plans submitted on behalf of security holders, believing that it will be necessary first to learn the decision of this Honorable Court concerning the three principal questions presented by them, which are as follows:

(1) the question as between the preferred and common stockholders discussed at length in this answer;

(2) whether the Coal Company's stock should be sold free from the lien of the mortgage;

(3) whether the Reading Company should offer a premium of 10% to the General Mortgage bondholders for release of the Coal Company's property from the lien of the mortgage.

Concerning questions (2) and (3) the Reading Company expresses no opinion. The provisions of the plan in-

volving the proceedings as to which these questions arise were inserted primarily to satisfy the government and this Honorable Court. If the Court should determine that either or both of these proceedings is unnecessary, the defendant Reading Company respectfully requests an opportunity to present a modified plan in the light of such determination of the Court.

XIV.

By way of cross petition to said petitions this defendant respectfully shows to the Court:

1. If leave be granted to any of said petitioners to intervene, the Reading Company respectfully petitions this Honorable Court to grant leave to intervene also, without other relief, to the Preferred Stockholders' Committee and William B. Kurtz and any other holders of stock, preferred or common, or both, who may have asked leave to intervene, to the end that the Court may be fully informed concerning the conflicting views of the Reading Company's stockholders.

2. In order to prevent multiplicity of suits and to insure the carrying out of the Plan submitted to the Court, or such other plan as the Court may approve, it is respectfully urged that if said petitioners are allowed to intervene in this cause, such intervention be permitted only on condition that such intervention be made on behalf of the petitioners and/or the stockholders represented by the petitioners and all others similarly situated, to the end that the decision of this Court in this cause may be binding on all stockholders of the defendant similarly situated, whether or not such stockholders shall actually intervene herein.

3. This defendant believes that this Court and this defendant should be informed as to the names of stockholders and amount of stock from time to time represented by the

Committees which may be allowed to intervene. Accordingly, this defendant respectfully suggests that all such Committees be directed by this Court to file with the Court:

(1) a certified copy of any agreement or other authority under which such Committee is constituted or acting;

(2) certified lists of the names of all stockholders represented by such Committee and the number of shares held by each, with dates, showing when their proxies were received by such Committee.

WHEREFORE this defendant respectfully prays:

(1) that if the prayer of any petitioner for leave to intervene herein be granted, it be granted only on the terms and subject to the conditions set out in XIV hereof and on such further terms and conditions as to your Honorable Court may seem just and proper;

(2) that all other prayers of said petitions be denied;

(3) that if this Honorable Court should determine that the stock of the Coal Company need not be released from the mortgage or that the Reading Company need not offer a premium of 10% to the holders of General Mortgage bonds for the release of the property of the Coal Company, defendant be granted time sufficient to formulate a modification of the plan in accordance with such determination of this Honorable Court;

(4) that the plan submitted to the Court on February 14, 1921, be approved as submitted, subject to such modifications as may be presented to and approved by this Honorable Court in the event referred to in the last preceding paragraph (3), and that the Court retain jurisdiction of this cause with directions to the defendant Reading Company to make report to this Court from

time to time at such intervals as this Court may determine of the progress made in executing the plan;

(5) that this defendant have such other and further relief in the premises as the nature and circumstances of the case may require and as to this Court shall seem proper.

Dated, April 5th, 1921.

READING COMPANY,
by CHARLES HEEBNER
General Counsel.

WM. CLARKE MASON
Solicitor.

R. C. LEFFINGWELL
Counsel.

Exhibit A

READING COMPANY
READING TERMINAL
PHILADELPHIA

FEBRUARY 14, 1921.

TO THE STOCKHOLDERS OF READING COMPANY:

This Company has submitted to the United States District Court for the Eastern District of Pennsylvania, pursuant to its order, a plan for the termination of the Reading Company's control by stock ownership of Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company (hereinafter called the Coal Company), and Central Railroad Company of New Jersey. Enclosed herewith for your information are a copy of the plan, a copy of the counter-proposal by the United

States to paragraph eight thereof and a copy of the order of the Court relating thereto.

The main features of the plan are:

(a) The sale of certificates of interest (described in the plan) in the stock of the Coal Company to the stockholders of the Reading Company, preferred and common, share and share alike, for \$5,600,000—an amount which is equal to \$2.00 for each \$50 share of Reading Company stock.

(b) Merger of the Philadelphia & Reading Railway Company into the Reading Company; the Reading Company thereafter to have only the powers appropriate for a railroad corporation of Pennsylvania and to own the railroad and property of the Philadelphia & Reading Railway Company, and in addition the railroad equipment, railroad stocks and bonds, and all property not otherwise disposed of under the plan, now owned by the Reading Company.

(c) The transfer of the stock of Central Railroad Company of New Jersey now owned by Reading Company to be deferred pending the grouping of railroads by the Interstate Commerce Commission, but subject to the further order of the Court.

(d) The early sale by the Central Railroad Company of New Jersey of the stock of the Lehigh & Wilkes-Barre Coal Company.

In order to carry out the separation of the Reading Company's railroad and coal properties it is necessary to arrange for a general financial settlement between the Reading Company and the Coal Company. There are outstanding \$96,524,000 of General Mortgage 4 per cent. bonds which are the joint obligation of the Reading Company and the Coal Company, and there are inter-company claims to be adjusted. As a step in compliance with the

decree of the Supreme Court, which requires a separation of interests, and in order that there may be but one principal debtor instead of the continuance of the present joint principal obligation, the Reading Company will assume the General Mortgage, and will agree to save the Coal Company harmless from liability on the bonds. Thereupon the Reading Company will become the principal debtor and, except as released as hereafter provided, the Coal Company and its property will stand as surety for the payment of the bonds. The Coal Company will pay the Reading Company \$10,000,000 in cash or current assets, and \$25,000,000 in 4 per cent. mortgage bonds of the Coal Company. These sums are in addition to the \$5,600,000 to be derived from the sale of the stock of the Coal Company. General releases of all claims and liabilities between the two companies will be exchanged. The Reading Company will offer the holders of General Mortgage bonds a premium of 10 per cent. for the release of the coal properties and their agreement, if a sufficient number of bonds assent to exchange General Mortgage bonds for its new refunding mortgage bonds to be hereafter created.

The Board of Directors believe that this plan, while fully complying with the decisions of the Supreme Court and the order of the District Court in separating the railroad and coal properties, involves a minimum disturbance of existing securities. The shares of stock, the General Mortgage bonds (unless and except to the extent that their holders elect to accept the above offer), and other bonds of or guaranteed by the Reading Company, will remain undisturbed, while the stockholders of the Reading Company, preferred and common, will have an opportunity to participate ratably in the purchase of the Coal Company stock, retaining their interest unaltered in the remaining properties.

This letter is sent to you for your information as to the general character of the action contemplated. You

will, of course, understand that pending consideration of it by the court and necessary further proceedings, the plan is wholly tentative.

By order of the Board of Directors.

AGNEW T. DICE,
President.

Exhibit B

Reading Company was originally incorporated as Excelsior Enterprise Company by the legislature of Pennsylvania by the act of 24 May 1871, P. L. 1089. The name was later changed to National Company and finally in 1896 to Reading Company. The original act of incorporation is as follows:

"No. 983

AN ACT

To incorporate the Excelsior Enterprise Company, with power to purchase, improve, use and dispose of property, to aid contractors and others, and for other purposes.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That Charles Cook, John Clayton, Edward M'Dowall, J. M'Clogan, J. H. Graham and Joseph Keating, their associates, successors and assigns, be and they are hereby authorized and empowered to form and be a body corporate, to be known by the name, style and title of the Excelsior Enterprise Company, and by that name, style and title shall have perpetual succession, and exercise and enjoy all the privileges incident to a corporation.

SECTION 2. The said corporation shall also have, enjoy and exercise the same rights, powers, privileges franchises and immunities as are conferred in and by an act of assembly of the Commonwealth of Pennsylvania, entitled 'An Act to incorporate the Pennsylvania Company,' approved the seventh day of April, Anno Domini one thousand eight hundred and seventy; and also have, exercise and enjoy the rights, privileges, franchises and immunities granted in and by any existing supplements to the charter of the said, the Pennsylvania Company, as if the same were herein specially and particularly set forth.

SECTION 3. That the stockholders of the said company, by and with the advice and consent of the holders of two-thirds of the shares of stock, be and they are hereby authorized to change the name and title of the said company, and to designate the location of its general office; which changes shall be valid after the filing of a certificate in the office of the secretary of the commonwealth, signed by the president and secretary and attested by the seal of the said company.

JAMES H. WEBB,

Speaker of the House of Representatives.

WILLIAM A. WALLACE,

Speaker of the Senate.

APPROVED—The twenty-fourth day of May, Anno Domini one thousand eight hundred and seventy-one.

JNO. W. GEARY."

Pennsylvania Company was incorporated by the following act:

"AN ACT

TO INCORPORATE THE PENNSYLVANIA COMPANY.

"SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by

authority of the same, that Andrew Howard, J. S. Swartz, G. B. Edwards, J. D. Welsh, and J. T. Malin, their associates, successors and assigns, or a majority of them, be and they hereby are authorized to form and be a body corporate, to be known as the Pennsylvania Company, and by that name, style and title, shall have perpetual succession, and all the privileges, franchises, and immunities incident to a corporation, may sue and be sued, implead and be impleaded, complain and defend, in all courts of law, and equity, of record and otherwise, may purchase, receive, hold and enjoy, to them, their successors and assigns, all such lands, tenements, leasehold estates and hereditaments, goods and chattels, securities and estates, real, personal and mixed, of what kind and quality soever, as may be necessary to erect depots, engine houses, tracks, shops and other purposes of the said corporation, as hereafter defined by the second section of this act, and the same from time to time may sell, convey, mortgage, encumber, charge, pledge, grant, lease, sub-lease, alien and dispose of and also make and have a common seal and the same to alter and renew at pleasure, and ordain, establish and put in execution such by-laws or ordinances, rules and regulations as may be necessary or convenient for the government of the said corporation, and not being contrary to the constitution and laws of this commonwealth, and generally may do all and singular the matters and things which to them shall appertain to do for the well-being of the said corporation and the management and ordering of the affairs and business of the same; Provided, That nothing herein contained shall be so construed as to give to the said corporation any banking privileges or franchises, or the privileges of issuing their obligations as money.

SECTION 2. That the corporation hereby created shall have power to contract with any person or persons, firms,

corporations or any other party, howsoever formed, existing or that may hereafter exist, in any way that said parties or any of them may have authority to do, to build, construct, maintain or manage any work or works, public or private, which may tend or be designed to improve, increase, facilitate or develop trade, travel or the transportation and conveyance of freight, live stock, passengers and any other traffic, by land or water, from or to any part of the United States or the territories thereof; and the said company shall also have power and authority to supply or furnish all needful material, labor, implements, instruments and fixtures of any and every kind whatsoever, on such terms and conditions as may be agreed upon between the parties respectively; and also to purchase, erect, construct, maintain or conduct, in its own name and for its own benefit, or otherwise, any such work, public or private, as they may by law be authorized to do, (including also herein lines for telegraphic communication,) and to aid, co-operate and unite with any other company, person or firm in so doing.

SECTION 3. The Company hereby created shall also have the power to make purchases and sales of or investments in the bonds and securities of other companies, and to make advances of money and of credit to other companies, and to aid in like manner contractors and manufacturers; and to receive and hold, on deposit or as collateral, or otherwise, any estate or property, real or personal, including the notes, obligations and accounts of individuals and companies, and the same to purchase, collect, adjust and settle, and also to pledge, sell and dispose thereof, on such terms as may be agreed on between them and the parties contracting with them; and also to endorse and guarantee the payment of the bonds and the performance of the obligations of other corporations, firms and individuals, and to assume, become responsible for, execute and carry out any contracts, leases or subleases made by

any company to or with any other company or companies, individuals or firms whatsoever.

SECTION 4. The company hereby created shall also have power to enter upon and occupy the lands of individuals or of companies, on making payment therefor or giving security according to law, for the purpose of erecting, constructing, maintaining or managing any public work, such as is provided for or mentioned in the second section of this act, and to construct and erect such works thereon, and also such buildings, improvements, structures, roads or fixtures as may be necessary or convenient for the purpose of said company under the powers herein granted; and to purchase, make, use, and maintain any works or improvements connected or intended to be connected with the works of the said company; and to merge or consolidate, or unite with the said company the improvements, property and franchises of any other company or companies, on such terms and conditions as the said company may agree upon; and to fix and regulate the tolls or charges to be charged or demanded for any freight, property or passengers travelling or passing over any improvement erected, managed or owned by the said company, or on any merchandise or property transported over any road whatever by the said company and to make, from time to time, dividends from the profits made by said company; the several railroads managed by the said company shall continue taxable, as heretofore, in proportion to their length within this State respectively; and the said Pennsylvania Company shall be taxable only on the proportions of dividends on its capital stock and upon net earnings or income, only in proportion to the amount actually carried by it within the State of Pennsylvania, and all its earnings or income derived from its business beyond the limits of this commonwealth shall not be liable for taxation.

SECTION 5. The capital stock of said company shall consist of two thousand shares of the value of fifty dollars each, being one hundred thousand dollars, and with the privilege of increasing the same, by a vote of the holders of a majority of the stock present at any annual or special meeting, to such an amount as they may from time to time deem needful, and the corporators, or a majority of them, named in the first section of this act, shall have power to open books for subscriptions at such times and places as they may deem expedient; and when not less than one thousand shares shall have been subscribed, and twenty per centum thereon shall have been paid in, the shareholders may elect not less than three nor more than nine directors to serve until the next annual election, or until their successors shall be duly elected and qualified; and the directors so elected may and they are hereby authorized and empowered to have and to exercise, in the name and in the behalf of the company, all the rights and privileges which are intended to be hereby given, subject only to such liabilities as other shareholders are subject to, which liabilities are no more than for the payment, to the company, of the sums due or to become due on the shares held by them; and should the capital stock at any time be increased, the stockholders, at the time of such increase, shall be entitled to a *pro rata* share of such increase, upon the payment of the instalments thereon duly called for; and whenever an increase of capital stock is made a certificate thereof, duly executed under the corporate seal of the company, and signed by the president and secretary, shall be filed with the auditor general before the same shall be deemed to be valid.

SECTION 6. The principal office of the said company shall be in the city of Pittsburgh; but the directors, under such rules and regulations as they may prescribe, may establish branches or agencies in other parts of the State,

or elsewhere; all of the directors of said company shall be citizens of the United States, and reside therein.

SECTION 7. The directors shall be elected annually by the stockholders on the first Tuesday of June of each year; and they shall elect from their number, at the first meeting of the board after their election, a president, and shall also have power to elect from their number, or otherwise, a vice-president, a treasurer and secretary, and such other officers, clerks and agents as the business of the company may require; all elections for directors shall be by ballot, and every stockholder shall be entitled to one vote for each share of stock held by him; but no person shall be eligible as director who is not a stockholder to the amount of ten shares; at the annual or special meetings a quorum shall consist of stockholders owning at least one-half of the capital stock.

SECTION 8. Ten days' notice shall be given, by publication in two newspapers published in the city of Pittsburgh, of the time and place of the annual election; which election shall be conducted by three stockholders, one of whom shall act as judge, and the other two as inspectors.

SECTION 9. The board of directors shall make all by-laws necessary for conducting the business of the company, which by-laws shall at all times be accessible to persons transacting business with them; the said directors shall have power, by a vote of a majority of their number, at any meeting of the board, to change the name of the said corporation; and by any new name, thus adopted, upon filing with the secretary of the commonwealth and the auditor general a truly certified certificate, the said company shall have, hold and enjoy all the rights, powers, privileges and immunities hereby granted; the directors shall have power to require payment of the amount remaining unpaid on the stock of said company at such times and in such proportions as they shall think proper;

the said assessment to be made as the by-laws of said company shall direct.

ELISHA W. DAVIS,
Speaker of the House of Representatives, pro tem.

CHARLES H. STINSON,
Speaker of the Senate.

Approved the seventh day of April, Anno Domini, 1870.

JNO. W. GEARY.

The following supplemental act was passed and accepted by Pennsylvania Company prior to May 24, 1871, the date of the act incorporating the Reading Company.

AN ACT.

Supplementary to an Act, entitled "An Act to incorporate the Pennsylvania Company", approved the 7th day of April, Anno Domini 1870, authorizing the issue of common or preferred stock, and authorizing the sale or disposal thereof by the company.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the capital stock of said company as authorized by said act, or the stock thereof when increased in the mode and manner prescribed therein, may be in the whole common, or in part preferred stock, as the said company may from time to time determine; and the said company are hereby authorized and empowered to issue said stock, or any portion thereof, in payment of any debt or liability incurred in the purchase of any property, or they may sell or dispose of any portion of said common or preferred stock, on such terms and conditions as the company may agree upon with any party or parties, company or companies, or in the doing of any other act au-

thorized by the provisions of the act to which this a supplement.

JAMES H. WEBB,
Speaker of the House of Representatives.

WILLIAM A. WALLACE,
Speaker of the Senate.

Approved the 18th day of February, Anno Domini,
1871.

JOHN W. GEARY.

Exhibit C

Certificate of First Preferred Stock printed as part of Exhibit C to petition of Continental Insurance Company *et al.*, *supra*, pp. 88, 89.

Exhibit D

Certificate of Second Preferred Stock printed as part of Exhibit C to petition of Continental Insurance Company *et al.*, *supra*, pp. 90, 91.

Exhibit E

Certificate of Common Stock printed as part of Exhibit C to petition of Continental Insurance Co. *et al.*, *supra*, pp. 92, 93.

Exhibit F

THE PHILADELPHIA AND READING COAL AND IRON COMPANY
TENTATIVE GENERAL BALANCE SHEET, DECEMBER 31, 1920.

DR.

CR.

AMOUNT		TOTAL	AMOUNT		TOTAL
CAPITAL ACCOUNTS			CAPITAL ACCOUNTS		
Coal Lands.....	\$43,183,094.88		P. & R. Collateral Sinking Fund		
Timber Lands.....	830,678.39		Loan, 1892-1932.....		\$870,000.00
New York and Eastern Depots....	892,834.64		Capital Stock.....		8,000,000.00
Western Yards and Depots.....	2,012,038.71		Reading Company.....		69,357,017.99
Miners and Other Houses.....	1,175,077.26				
Pottsville Shops, Real Estate and Improvements	461,104.92				
Storage Yards and Washeries....	675,107.78				
Other Real Estate.....	427,282.19				
Improvements and Equipments at Collieries	14,894,210.91				
Stocks and Bonds of and Loans to Companies Controlled	9,920,260.85				
		\$74,471,690.53			
Stocks, Bonds and Mortgages.....		490,384.50			
1st U. S. Liberty Loan Bonds Con- verted	300.00		CURRENT LIABILITIES		
2nd U. S. Liberty Loan Bonds Con- verted	1,903,500.00		Pay Rolls and Vouchers.....	\$2,892,039.19	
3rd U. S. Liberty Loan Bonds....	1,484,969.34		Due for Coal Purchased.....	36,344.08	
4th U. S. Liberty Loan Bonds....	3,003,550.00		Due for Royalty on Coal Mined....	58,565.45	
2nd, 3rd and 4th U. S. Liberty Loan Bonds purchased for sale to em- ployes, less collections on ac- count	114,635.92		Freight and Tolls Due Foreign Roads	17,680.74	
		6,506,955.26	Companies and Individuals.....	397,483.56	
			Interest Due and Uncollected.....	280.00	
			Interest and Taxes Accrued.....	1,312,652.26	
					4,715,045.28
CURRENT ASSETS					
Cash	8,245,174.27		Miners' Beneficial Fund.....		76,752.25
Bills Receivable.....	9,222.76		Workmen's Compensation Fund...		1,454,006.77
Coal Accounts.....	8,015,094.29		Contingent Fund.....		1,608,203.24
Rent Accounts.....	46,735.48				
Companies and Individuals.....	4,768,626.72				
Coal on Hand.....	1,727,565.43				
Supplies and Materials on Hand..	3,925,492.43				
Accrued Interest on Bonds owned by Company.....	65,515.99				
		26,803,427.37			
Depletion of Coal Lands' Fund In-					

vestment:—		
Cash	8,517.83	
Securities	2,031,471.75	
		2,039,989.58
Workmen's Compensation Fund In-		
vestment:—		
Cash	14,075.72	
Securities	1,439,931.05	
		1,454,006.77
		<u>\$111,766,454.01</u>

Profit and Loss to Dec. 31, 1919...	19,013,206.09	
Profit and Loss Jan. 1 to Dec. 31,		
1920	6,672,222.39	
		25,685,428.48
		<u>\$111,766,454.01</u>

THE PHILADELPHIA AND READING COAL AND IRON COMPANY

INCOME ACCOUNTS FOR THE YEARS ENDING DECEMBER 31, 1916, 1917, 1918, 1919, AND TENTATIVE INCOME ACCOUNT FOR 1920.

RECEIPTS	1916	1917	1918	1919	1920 (Tentative)
Coal Sales (Anthracite).....	\$40,673,462.86	\$48,054,942.41	\$54,218,911.43	\$58,048,078.31	.....
Coal Sales (Bituminous).....	1,423,276.83	1,092,961.62	1,292,089.02	1,209,892.59	.....
Coal Rents.....	324,112.57	273,881.55	260,280.81	239,130.52	.....
House and Land Rents.....	143,188.13	151,197.54	153,086.40	174,944.28	.....
Interest and Dividends.....	66,649.99	92,216.79	303,701.09	373,248.05	.....
Miscellaneous	70,370.96	231,708.40	158,870.20	59,931.68	.....
Total Receipts.....	\$42,701,061.34	\$49,896,908.31	\$56,386,938.95	\$60,105,225.43	\$75,208,259.70
EXPENSES					
Mining Coal and Repairs.....	\$22,384,972.94	\$27,851,557.26	\$37,798,861.50	\$43,616,852.85	.....
Improvements at Collieries.....	867,664.60	1,505,506.71	1,455,911.97	1,316,612.96	.....
Coal Purchased (Bituminous).....	1,265,104.81	982,206.32	1,143,433.51	1,199,657.18	.....
Royalty of Leased Collieries.....	625,042.15	823,090.36	908,302.77	817,154.90	.....
Transportation of Coal by Rail.....	5,848,808.15	5,935,059.54	7,035,979.97	6,420,120.59	.....
Transportation of Coal by Water.....	978,201.32	882,701.12	400,327.86	333,553.09	.....
Handling Coal at Depots.....	443,363.28	421,988.95	395,667.01	604,627.41	.....
Taxes on Coal Lands and Improvements.....	714,200.00	735,972.68	754,734.16	1,143,969.92	.....
Improvements and Repairs of Houses.....	43,195.92	43,967.59	71,383.33	83,268.37	.....
Damages Account Coal Dirt.....	8,770.87	16,849.95	1,222.64	1,018.21	.....
Workmen's Compensation Fund.....	474,253.92	523,072.46	497,689.36	489,207.05	.....
Contingent Fund.....	718,806.27	1,002,745.30	178,089.15	.....	.....
Depletion of Coal Lands Fund.....	.....	451,339.06	453,304.87	406,485.60	.....
All Other Expenses.....	1,293,969.89	1,646,612.15	1,778,122.81	2,052,141.50	.....
Coal Sold from Stock.....	3,934,952.18	492,272.17	.....	.....	.....
Less Coal Added to Stock.....	\$39,601,306.30	\$43,308,941.62	\$52,873,030.91	\$58,484,669.63	\$67,826,038.37
Total Expenses.....	\$39,601,306.30	\$43,308,941.62	\$51,746,776.75	\$57,233,953.25	\$67,826,038.37
Profit in Operating.....	\$3,099,755.04	\$6,587,966.69	\$4,640,162.20	\$2,871,272.18	\$7,382,221.33
Adjustments of Royalty, Inventory, etc.....	.....	.....	.....	232,112.83	260,009.98
				\$3,103,385.01	\$7,642,231.31
Fixed Charges, Taxes and Interest.....	\$207,308.09	\$1,151,333.69	\$480,000.00	\$236,648.16	\$970,008.92
Taxes on Coal Lands and Improvements Previous Years	66,159.51	.....	.....	.....	.....
Judgment Paid Bellas Estate.....	362,497.14	.....	.....	.....	.....
	\$635,964.74	\$1,151,333.69	\$480,000.00	\$236,648.16	\$970,008.92
Profit	\$2,463,790.30	\$5,436,633.00	\$4,160,162.20	\$2,866,736.85	\$6,672,222.39
Profit of Previous Years.....	4,085,883.74	6,549,674.04	11,986,307.04	16,146,469.24	19,013,206.09
Balance to Credit of Profit and Loss Account.....	\$6,549,674.04	\$11,986,307.04	\$16,146,469.24	\$19,013,206.09	\$25,685,428.48

Exhibit 6

Actual balance sheets of the Reading Company and of the Philadelphia & Reading Railway Company as of December 31, 1920, together with a consolidated balance sheet of the Reading Company as it would have been at that date if the transactions contemplated by the plan had then been fully consummated.

ASSETS

	READING COMPANY	P. & R. RY. CO.	ELIMINATIONS	CONSOLIDATED
<i>Investments:</i>				
Road and Real Estate.....	16,382,479.08	128,319,306.14	.....	144,701,785.22
Rolling Equipment.....	50,655,195.56	.....	.....	50,655,195.56
Floating Equipment.....	5,223,593.89	.....	.....	5,223,593.89
Ferry Boats "Haddon Heights" and "Ventnor".....	632,928.04	.....	.....	632,928.04
Leased Equipment.....	20,467,063.55	.....	.....	20,467,063.55
Improvements on Leased Railway Property.....	.....	21,875,969.04	.....	21,875,969.04
Deposits in Lieu of Property Sold.....	.....	274.50	.....	274.50
Miscellaneous Physical Property.....	.....	1,565,810.77	.....	1,565,810.77
Investments in Affiliated Companies:				
(a) Stocks	101,619,084.39	170,200.00	50,481,700.00	51,307,584.39
(b) Bonds	41,082,315.22	.....	20,207,272.70	20,875,042.52
(c) Advances	11,383,931.04	2,113,281.52	118,709.46	13,378,503.10
Total Investments in Affiliated Companies....	154,085,330.65	2,283,481.52	70,807,682.16	85,561,130.01
Other Investments:				
(a) Stocks	2,445,051.51	15,283.89	.....	2,460,335.40
(b) Bonds	3,507,305.56	2,200.00	Add 25,000,000.00	28,509,505.56
Total Other Investments.....	5,952,357.07	17,483.89	Add 25,000,000.00	30,969,840.96
Mortgages and Ground Rents.....	253,016.66	.....	20,500.00	232,516.66
Total Investments.....	253,621,964.50	154,062,325.86	45,828,182.16	361,856,108.20
Due from Philadelphia and Reading Coal and Iron Co.	69,357,017.99	.....	69,357,017.99	.....
<i>Current Assets:</i>				
Cash	2,894,455.75	1,876,792.51	Add 6,228,300.00	10,999,548.26
Special Deposits.....	59,040.00	815.00	.....	59,855.00
Loans and Bills Receivable.....	100,000.00	16,789.30	.....	116,789.30
Net Balance Receivable from Agents and Conductors .....	.....	3,180,128.93	.....	3,180,128.93
Miscellaneous Accounts Receivable.....	1,394,101.61	2,765,474.44	.....	4,159,576.05
Accrued Interest and Dividends.....	1,148,279.85	.....	.....	1,148,279.85
Materials and Supplies.....	.....	9,502,299.56	.....	9,502,299.56
Rents Receivable.....	37,114.64	20,966.14	.....	58,080.78
Philadelphia & Reading Railway Co.....	747,415.79	.....	745,349.05	2,066.74
Other Current Assets.....	635,585.70	1,917,439.29	.....	2,553,024.99
Total Current Assets.....	7,015,993.34	19,280,705.17	Add 5,482,950.95	31,779,649.46
<i>Deferred Assets:</i>				
Working Fund Advances.....	.....	98,294.37	.....	98,294.37
Insurance and Other Funds.....	.....	1,040,332.08	.....	1,040,332.08
U. S. Government.....	.....	41,997,484.94	.....	41,997,484.94
Total Deferred Assets.....	.....	43,136,111.39	.....	43,136,111.39
<i>Unadjusted Debits:</i>				
Rents and Insurance Premiums Paid in Advance.....	.....	1,523.86	.....	1,523.86
Other Unadjusted Debits.....	8,215.02	3,293,542.83	.....	3,301,757.85
Total Unadjusted Debits.....	8,215.02	3,295,066.69	.....	3,303,281.71
Securities Issued or Assumed—Unpledged.....	.....	2,782,000.00	.....	2,782,000.00
TOTAL	330,033,190.85	222,556,209.11	109,702,249.20	442,887,150.76

LIABILITIES

<i>Capital Stock:</i>				
Preferred.....	28,000,000.00	.....	.....	28,000,000.00

	140,000,000.00	42,481,700.00	42,481,700.00	140,000,000.00
<i>Funded Debt:</i>				
Equipment Trust Obligations.....	9,450,000.00	.....	.....	9,450,000.00
Mortgage Bonds.....	98,214,000.00	40,766,752.00	20,227,160.20	118,753,591.80
Collateral Trust Bonds.....	24,295,000.00	.....	.....	24,295,000.00
Debenture Bonds.....	.....	8,500,000.00	.....	8,500,000.00
Bonds and Mortgages on Real Estate.....	797,015.28	66,266.94	20,500.00	842,782.22
Total Funded Debt.....	132,756,015.28	49,333,018.94	20,247,660.20	161,841,374.02
Non-negotiable debt to Affiliated Companies.....	.....	1,146,457.25	817,175.49	329,281.76
<i>Current Liabilities:</i>				
Notes Payable.....	3,300,000.00	.....	500,000.00	2,800,000.00
Traffic and Car Service Balances Payable.....	.....	3,768,709.31	.....	3,768,709.31
Audited Accounts and Wages Payable.....	.....	9,184,109.22	.....	9,184,109.22
Miscellaneous Accounts Payable.....	.....	659,156.85	46,883.02	612,273.83
Interest Matured Unpaid.....	1,931,500.00	9,800.00	.....	1,941,300.00
Funded Debt Matured and Unpaid.....	.....	24,500.00	.....	24,500.00
Unmatured Interest and Rentals.....	475,856.06	560,591.32	.....	1,036,447.38
Other Current Liabilities.....	409,918.97	3,111,396.27	.....	3,521,315.24
Income Received in Advance of Accrual.....	.....	.....	.....	.....
Total Current Liabilities.....	6,117,275.03	17,318,262.97	546,883.02	22,888,654.98
Philadelphia & Reading Coal and Iron Co. Special A/c	2,000,000.00	.....	2,000,000.00	.....
Sinking Fund General Mortgage Loan.....	494.89	.....	.....	494.89
Contingent Account.....	5,152,743.31	.....	.....	5,152,743.31
<i>Deferred Liabilities:</i>				
U. S. Government.....	.....	36,396,350.17	.....	36,396,350.17
Other Deferred Liabilities.....	.....	81,176.57	.....	81,176.57
Total Deferred Liabilities.....	.....	36,477,526.74	.....	36,477,526.74
<i>Unadjusted Credits:</i>				
Tax Liability.....	372,678.21	1,802,934.34	.....	2,175,612.55
Insurance and Casualty Reserves.....	.....	1,043,462.42	.....	1,043,462.42
Operating Reserves.....	.....	711,608.99	.....	711,608.99
Reserve for Replacement of Equipment.....	9,443,324.50	.....	.....	9,443,324.50
U. S. Government.....	.....	4,932.43	.....	4,932.43
Other Unadjusted Credits.....	193,676.62	8,508,979.12	.....	8,702,655.74
Total Unadjusted Credits.....	10,009,679.33	12,071,917.30	.....	22,081,596.63
<i>Corporate Surplus:</i>				
Additions to Property through Income & Surplus	.....	53,451,156.59	.....	.....
Profit and Loss.....	33,996,983.01	10,276,169.32	.....	.....
Total Corporate Surplus.....	33,996,983.01	63,727,325.91	43,608,830.49	54,115,478.43
TOTAL.....	330,033,190.85	222,556,209.11	109,702,249.20	442,887,150.76

Exhibit H

STATE OF PENNSYLVANIA, }
County of Philadelphia, } ss.:

AGNEW T. DICE, being duly sworn according to law, declares that he is the President of Philadelphia and Reading Railway Company and of Reading Company, and is familiar with the assets of both Corporations and has examined the balance sheets of the Reading Company and the Philadelphia and Reading Railway Company as of December 31, 1920, together with the consolidated balance sheet of the Reading Company as it would have been at that date if the transactions contemplated by the Reading plan had then been fully consummated, which are attached as Exhibit "G" to the Answer of Reading Company to certain intervening petitions in this cause. This affiant believes and therefore avers that the valuation at which it is proposed to carry the properties of Philadelphia and Reading Railway Company upon the books of the Reading Company after the consolidation and merger of the two Corporations shall be accomplished according to the provisions of the Reading plan are correctly set forth in the consolidated balance sheet above referred to, included in Exhibit "G" aforesaid.

AGNEW T. DICE.

Sworn to and subscribed before me }
this 5th day of April A. D. 1921 }

J. V. HARE,

Notary Public.

[SEAL]

Commission Expires March 1, 1923.

Exhibit I

COMPARISON OF WORKING ASSETS AND LIABILITIES

	Reading Co. as of December 31, 1920	Philadelphia & Reading R. R. Co. as of December 31, 1920	Reading after Comple- tion of P.
Current Assets.....	\$ 7,015,993.34	\$19,280,705.17	\$41,179,611.39
Deferred Assets.....	.....	43,136,111.39	43,136,111.39
Unadjusted Debits.....	8,215.02	3,295,066.69	3,303,281.71
Securities Issued or As- sumed .....	.....	2,782,000.00	2,782,000.00
Total Working Assets.	\$ 7,024,208.36	\$68,493,883.25	\$90,401,703.49
Current Liabilities.....	6,117,275.03	\$17,318,262.97	\$22,888,525.94
Deferred Liabilities.....	.....	36,477,526.74	36,477,526.74
Unadjusted Credits, Less Reserve for Replace- ment of Equipment.	566,354.83	12,071,917.30	12,638,272.13
Philadelphia & Reading Coal & Iron Co.— Special Account.....	2,000,000.00	.....	.....
Sinking and Contingent Funds	5,153,238.20	.....	5,153,238.20
Amount Payable to Gen- eral Mortgage Bond- holders .....	.....	(not ex- ceeding) 9,400,000.00	.....
Total Working Liabili- ties	\$13,836,868.06	\$65,867,707.01	\$86,557,764.14
Excess of Assets.....(Def.)	\$6,812,659.70	\$2,626,176.24	\$3,843,939.35

**Order Granting Leave to Intervene and Making Central Union Trust
Company Party Defendant.**

(Filed April 12, 1921.)

AND NOW, this 12th day of April, A. D. 1921, the Court having read and considered certain petitions for leave to intervene in the above entitled cause, which, pursuant to permission granted in open Court March 1st A. D. 1921, have been filed with the Court by—

Seward Prosser *et al.*, Committee for Common Stockholders;

Adrian Iselin *et al.*, Committee for Preferred Stockholders;

New York Central Railroad Company;

Baltimore & Ohio Railroad Company;

William B. Kurtz and Madge Fulton Kurtz;

Continental Insurance Company and Fidelity and
Phoenix Fire Insurance Company of New York;

Penn Mutual Life Insurance Company;

Pennsylvania Company for Insurances on Lives and
Granting Annuities;

Frances T. Ingraham, Robert S. Ingraham, Mabel B.
Ingraham and Marcus L. Taft;

The Girard Avenue Title and Trust Company;

Joseph E. Widener.

And the Court having also read and considered the Answer of the Reading Company and the separate Answer of Joseph E. Widener, it is—

Ordered, Adjudged and Decreed that leave be and is hereby given to—

Seward Prosser *et al.*, Committee for Common Stockholders;

Adrian Iselin *et al.*, Committee for Preferred Stockholders;

New York Central Railroad Company;

Baltimore and Ohio Railroad Company;

William B. Kurtz and Madge Fulton Kurtz;

Continental Insurance Company and Fidelity and
Phoenix Fire Insurance Company of New York;

Penn Mutual Life Insurance Company;

Pennsylvania Company for Insurances on Lives and
Granting Annuities;

Frances T. Ingraham, Robert S. Ingraham, Mabel B.
Ingraham and Marcus L. Taft;

The Girard Avenue Title and Trust Company;

Joseph E. Widener,

to intervene in the above entitled cause as parties defendant, on their own behalf and on behalf of all other stockholders and bondholders of Reading Company having and being possessed of similar rights and interests, on condition, however, that all of the said petitioners appearing in a representative capacity, as Committee or otherwise, shall have no rights, or status, as parties defendant aforesaid, unless and until they shall file with the Court, and shall serve upon the Attorney General of the United States and the Solicitor for the Reading Company—

(1) A certified copy of the agreement or other authority under or by virtue of which such Committee or other Petitioner appearing in a representative capacity was constituted or is acting; and

(2) Certified lists of the names and addresses of all stockholders or bondholders alleged to be represented by such Committee, or such other petitioner or petitioners, and the number and class of shares of stock, and the number of bonds, held by each stockholder or bondholder so represented.

It is further ordered that the above named Petitioners appearing on their own behalf and such of the said Petitioners appearing in a representative capacity as shall comply with the conditions set forth above, who shall become parties defendant as aforesaid, shall forthwith cause formal appearance to be entered for them and each of them by Counsel, duly signed by such Counsel in his or their own handwriting, with the post office address of such counsel therein set forth, upon whom service of any and all papers and pleadings in this cause may hereafter be made.

And it is further ordered that, pursuant to the petition of the United States of America, the Central Union Trust Company, of New York, Trustee under the General Mortgage of Reading Company and The Philadelphia & Reading Coal & Iron Company, be and is hereby made party defendant in this cause, with leave to appear by Counsel as aforesaid.

By the Court:

J. W. THOMPSON,

J.

Order Setting Down Questions for Argument.

(Filed April 12, 1921.)

AND NOW, this 12th day of April A. D. 1921, leave having been given to certain Petitioners to intervene in the above entitled cause, by an order this day entered;

And the Court having read and duly considered the Petitions of the said Petitioners and the Answers thereto;

And the Court being of opinion that certain matters

therein presented, in relation to the Reading Plan filed in this cause, should be considered further by the Court only after hearing of the parties of record in this cause; it is

Ordered, Adjudged and Decreed that on Monday, the 2nd day of May, A. D. 1921, at 10:30 A. M., the Court will hear argument upon the following questions:

(1) (a) Whether the sale provided for in paragraph Five of the Reading Plan is such a disposition of the interest of Reading Company in the stock of The Philadelphia & Reading Coal & Iron Company as accomplishes the express purpose of the mandate of the Supreme Court of the United States requiring disposition by Reading Company of such stock because the holding of it has been and would be unlawful; (b) and if the mandate is thereby complied with, whether such disposition confers upon any one class of stockholders of Reading Company any benefit to the prejudice of the legal rights of any other class of stockholders.

(2) Whether the stock of the Coal Company should be sold free from the lien of the General Mortgage, or whether a sale of Certificates of Interest therein would be a compliance with the provisions aforesaid of the mandate of the Supreme Court of the United States.

(3) Whether the Reading Company should offer a premium of ten per cent. to the General Mortgage bondholders for release of the Coal Company's property from the lien of the mortgage, or whether the requirements of the mandate of the Supreme Court of the United States may be fulfilled by proper injunctive provisions in the decree to be entered in this cause.

It is further ordered that all parties of record who desire to be heard orally, by counsel, on the said second day of May, shall file with the Court, on or before the 30th day of April A. D. 1921, ten copies of a printed brief containing in substance the proposed argument for the party or parties desiring to be heard.

By the Court.

J. W. THOMPSON J.

Appearances.

Appearances were filed as follows:

1. Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York, by Alfred A. Cook (filed April 20, 1921).

2. Seward Prosser, Mortimer N. Buckner and John H. Mason as a Committee representing holders of common stock of Reading Company, by J. DuPratt White (filed April 22, 1921).

3. Frances T. Ingraham, *et al.*, by George S. Ingraham (filed April 15, 1921).

4. Adrian Iselin, Robert P. Dodson, Edwin G. Merrill and William A. Law as a Committee representing certain holders of First and Second Preferred stock of Reading Company by Cadwalader, Wickersham & Taft (filed April 29, 1921).

5. New York Central Railroad Company, by George S. Lyman (filed April 16, 1921).

6. Baltimore & Ohio Railroad Company, by H. B. Gill and Hugh L. Bond, Jr. (filed April 27, 1921).

7. William B. Kurtz and Madge Fulton Kurtz, by Thomas Reyburn White (filed April 18, 1921).

8. Penn Mutual Life Insurance Company, by George Wharton Pepper (filed April 19, 1921).

9. Girard Avenue Title and Trust Company, by Michael J. Ryan (filed April 18, 1921).

10. Joseph E. Widener, by Ellis A. Ballard (filed April 26, 1921).

Filing of Certificates.

Certificates with respect to securities of Reading Company owned or represented were filed as follows:

1. By Continental Insurance Company and Fidelity-Phenix Fire Insurance Company, certifying that each of said Companies is the holder of 4200 shares of the common stock of Reading Company (filed April 20, 1921).

2. By Madge Fulton Kurtz, certifying that she is the owner of 1000 shares of the second preferred stock of Reading Company and owns neither first preferred nor common stock nor bonds of the Reading Company (filed April 19, 1921).

3. By William B. Kurtz, certifying that he is the owner of 450 shares of first preferred stock, and 8200 shares of second preferred stock, and that he owns neither common stock nor bonds of the Reading Company (April 18, 1921).

4. By Seward Prosser, Mortimer N. Buckner and John H. Mason, certifying that as a Committee they represent 2629 holders of common stock owning 407,728 shares. Of these holders 462 owned under ten shares, 1362 owned under twenty-five shares, 1644 owned under fifty shares, 1931 owned under one hundred shares and

698 owned one hundred shares or over. These stockholders executed powers of attorney to the Prosser Committee authorizing the Committee to appear personally or by counsel to protect the interests of the holders of common stock of the Reading Company in the proposed plan of segregation (filed April 22, 1921).

5. By Adrian Iselin, Robert P. Dodson, Edwin G. Merrill and William A. Law, certifying that as a Committee they represent 654 holders of first preferred stock, owning 127,592 shares, and 437 holders of second preferred stock, owning 98,741 shares, the aggregate holdings of these 1091 stockholders amounting to \$11,316,350 par value. These stockholders executed powers of attorney to the Iselin Committee, authorizing the Committee to appear personally or by counsel to protect the interests of the holders of preferred stock of the Reading Company in the proposed plan of segregation and particularly to endeavor to secure for the preferred stock equality of treatment with the common stock of the Company (filed April 29, 1921).

6. By Joseph E. Widener certifying that he is the owner of 1900 shares common stock of Reading Company and represents 6700 shares of common stock standing in the name of P. A. B. Widener, and 93,300 shares of common stock of the Reading Company standing in the name of the Estate of P. A. B. Widener.

Modifications of Plan.

(Filed May 12, 1921.)

In pursuance of the direction of this Court at the hearing on May 2, 1921, defendant Reading Company respectfully submits for the consideration of the Court the following modifications of the Plan dated February 14, 1921:

Paragraph numbered 4 of the Plan as modified will read as follows:

4. The Reading Company will agree with the Coal Company that, at or before the maturity of the General Mortgage bonds, it will obtain the release of the Coal Company's property from the lien of the General Mortgage and the discharge of the Coal Company from liability on the General Mortgage bonds.

Paragraph numbered 5 of the Plan as modified will read as follows:

5. If the Court so orders, the Reading Company will, subject to the lien of the General Mortgage, sell, assign and transfer all its right, title and interest in and to the stock of the Coal Company, including the present right to vote and receive dividends thereon, to a new corporation to be formed with appropriate powers, and will agree to save the new corporation and said stock harmless from the lien of the General Mortgage, and will agree to obtain, at or before the maturity of the General Mortgage, the release of the stock of the Coal Company from the lien of the General Mortgage and the assignment, transfer and delivery of said stock to the new corporation—all in consideration of the payment by the new corporation to the Reading Company of the sum of \$5,600,000 and its agreement to issue its shares to the stockholders of the Reading Company as hereinafter provided.

The new corporation will issue 1,400,000 shares of

stock without par value. Such no par value stock will be sold by the new corporation to the stockholders of the Reading Company, preferred and common, share and share alike, for \$5,600,000, or \$2.00 for each share of Reading stock. Provision will be made for the disposition by the Reading Company of any rights to subscribe which may not be availed of by the Reading stockholders within such period as may be fixed by the Court, to the end that the new corporation shall receive the full purchase price of \$5,600,000. It is proposed to carry out this sale in accordance with the precedent established by the Union Pacific-Southern Pacific case, by issuing to Reading stockholders, with or without the intervention of a trustee, as may be provided for in the final decree of the Court, assignable certificates of interest in the stock of the new corporation exchangeable for such stock only when accompanied by an affidavit that the holder is not the owner of any stock of the Reading Company.

In addition there will be embodied in the final decree a permanent injunction against the new corporation exercising its voting power on the stock of the Coal Company in such a way as to bring about any new relations between the Coal Company and the Reading Company of the character complained of in the present suit. Any further steps, which may be deemed necessary by the Court, will be taken to the end that an independent board and management to be approved by it will be maintained for the Coal Company, so that the independence of this Company need not await the necessarily gradual process of the distribution of the no par value stock of the new corporation among persons not holders of stock in the Reading Company.

The final decree may provide that if by reason of default on the General Mortgage bonds the Trustee, the Central Union Trust Company, shall exercise the right to vote the stock of Reading Coal Company, it shall so

exercise that right as not to bring about unity of management between said Coal Company and Reading Company; and the final decree may further provide that, in the event the Trustee at any time is obliged to sell the stock or properties of Reading Coal Company, it shall dispose of such stock and properties separately from the properties of Reading Company and to different interests.

Paragraph numbered 7 of the Plan will be omitted.
Paragraph numbered 8 of the Plan will be numbered 7.

READING COMPANY,
By CHARLES HEEBNER,
General Counsel.

WM. CLARKE MASON,
Solicitor.

R. C. LEFFINGWELL,
Counsel.

Approved on behalf of the United States.

ABRAM F. MYERS,
Special Assistant to the
Attorney General.

Stipulation.

IT IS HEREBY STIPULATED by and between the solicitors for the appellants and appellees that the following documents, papers and summaries, taken from the record of this case prior to the decision of the Supreme Court dated April 26, 1920, shall constitute a part of the Record on Appeal and shall be printed as a part of the transcript of record.

Plan of Reorganization of the Philadelphia and Reading Railroad Company and Philadelphia and Reading Coal and Iron Company, dated December 14, 1895 (Old Record, Government Exhibit 4, Introduced in Evidence, Vol. II, p. 13).

As security-holders are doubtless aware, the undersigned Committee has, for over a year past, devoted its time and attention to the affairs of the above-named companies, and, as a result, a decree for the foreclosure of the General Mortgage is expected shortly to be entered.

The Committee feels, therefore, that the time is now opportune to bring about a reorganization of the properties of the Philadelphia and Reading Railroad Company and of the Philadelphia and Reading Coal and Iron Company on the basis which it originally undertook to accomplish, being one which shall attain the following results:

- (a) the protection of the present General Mortgage;
- (b) the reduction of the fixed charges to a limit safely within the net earning capacity of the reorganized properties;
- (c) adequate provision of cash working capital for future requirements;
- (d) the payment of the floating debt, and provision for the existing car trust obligations;
- (e) such control of the reorganized System until the earnings of the properties shall have placed them in a satisfactory financial position, as shall render additionally secure the new General Mortgage.

Having these objects in view, the annexed plan has been prepared, with the co-operation of Messrs. J. P.

Morgan & Co., who have been selected by the Committee to act as Managers to carry out the plan.

FREDERIC P. OLCOTT,	}	Committee.
ADRIAN ISELIN, JR.,		
J. KENNEDY TOD,		
HENRY BUDGE,		
THOMAS DENNY,		
GEORGE H. EARLE, JR.,		
SIDNEY F. TYLER,		
SAMUEL R. SHIPLEY,		
RICHARD Y. COOK,		

PRELIMINARY CONDITIONS OF PARTICIPATION UNDER THE PLAN.

Participation under the plan of reorganization, in any respect whatsoever, by any stockholder or bondholder affected thereby (as specified on p. 7), is dependent on his depositing his holdings with one of the Depositaries, Messrs. J. P. Morgan & Co., 23 Wall Street, New York; Messrs. Drexel & Co., Fifth and Chestnut Streets, Philadelphia, or Messrs. J. S. Morgan & Co., 22 Old Broad Street, London, within such time as may be fixed, and will embrace only securities so deposited. As to Income Bonds and Stock so deposited, participation is further dependent on the payment of assessments, as provided in the plan (see p. 8). All securities for deposit must be in negotiable form.

The assessments on Income Bonds and Stock will be payable at the office of Messrs. J. P. Morgan & Co., Messrs. Drexel & Co. or Messrs. J. S. Morgan & Co., at the option of each depositor, in four equal installments, at least 30 days apart, when and as called for by advertisement in each instance at least twice a week for two weeks in two of the daily papers of general circulation published in the Cities of New York, Philadelphia and

London, respectively. All payments must be receipted for by one of the Depositaries on the reorganization certificates.

Failure to pay assessments when and as payable, will subject the deposited securities and all rights on account of any prior payments, to forfeiture as hereinafter provided.

The holders of receipts of the Central Trust Company of New York for General Mortgage Bonds deposited under the existing bondholders' agreement of May 7, 1894, shall be entitled to the benefits of this plan without the issue of new receipts or certificates, provided, that within the time limited therefor, such existing receipts be produced to one of the Depositaries and stamped as assenting to this plan.

All holders of General Mortgage bonds not already deposited with the Central Trust Company of New York under the existing bondholders' agreement, shall, by delivery thereof to the Depositaries, be deemed to deposit their bonds under said bondholders' agreement, and, for the bonds deposited, will receive certificates of said Trust Company issued under that agreement, duly stamped by one of the Depositaries as assenting to this plan.

The holders of receipts heretofore issued by the Central Trust Company of New York for First, Second and Third Preference Income Bonds, Deferred Income Bonds and Stock, must surrender the same to one of the Depositaries and must obtain new certificates hereunder in exchange therefor, in order to entitle them to the benefit of this plan. Receipts not so exchanged will not be entitled to participation herein.

PLAN OF REORGANIZATION.

THE NEW COMPANY.

Unless the Managers shall decide to proceed without foreclosure or sale, the properties of the existing Reading companies will be sold and successor companies will be organized under the laws of Pennsylvania; and the stocks and securities of these successor companies will be vested in a new company, formed or to be formed under the laws of Pennsylvania or of some other State. The term "New Company," as hereinafter used, is intended to mean either the existing Reading companies or the New Proprietary Company.

Pending their use for reorganization purposes, all bonds deposited hereunder will be delivered by the Depositaries to the Central Trust Company of New York, and all stock will be delivered in like manner to the Mercantile Trust Company, and shall be held by them respectively subject to the order and control of the Committee. All stocks and bonds deposited under the plan are to be kept alive so long as necessary for the purpose of reorganization.

NEW STOCKS AND BONDS.

A.

THE NEW COMPANY is to authorize the following securities:

1. GENERAL MORTGAGE 100-YEAR 4% GOLD BONDS FOR \$114,000,000.

These bonds are to be secured by mortgage and pledge of all properties and securities embraced in the reorganization as carried out, and also all other property which shall be acquired thereafter by use of any of the new bonds.

Of the new General Mortgage bonds, \$44,550,000 are to be reserved so that they can be issued only against existing undisturbed bonds (Table C); the present Improvement Mortgage bonds amounting to \$9,364,000, maturing in 1897, may, however, be extended at not over $4\frac{1}{2}\%$ per annum interest.

\$20,000,000 of the new bonds will be reserved for purposes of future construction, equipment, etc. (available only to an extent not exceeding \$1,500,000 in any one year), thus providing adequate means for extension of business.

The new mortgage will further provide for the issue, if found desirable, of additional bonds secured thereby (not exceeding \$21,000,000) for the following purposes:

\$8,500,000 to meet the Philadelphia and Reading Terminal bonds

\$12,500,000 to meet the Philadelphia and Reading Coal and Iron bonds

in which case these bonds, or the property covered thereby, will be bought under the new mortgage as additional security therefor.

Suitable arrangements will be made for a sinking fund out of the revenues from the Coal and Iron Company, or its successor, to be used to retire new General Mortgage Bonds, but no compulsory redemption of the new bonds can be made prior to their maturity.

The new mortgage will, subject only to the bonds for which reservation is made, be based upon properties or securities of all the lines of railroad owned by the Philadelphia and Reading Co., 327 miles.

Various leasehold lines, 552 miles, more or less.

All the property of the Coal and Iron Company, or the securities thereof, representing nearly 200,000 acres of coal and timber land.

The new mortgage will also have the benefit of equipment valued at about \$10,000,000, but now subject to

about \$7,300,000 of car trust obligations, which are to be acquired under the plan, and also the marine equipment of the Company.

Furthermore, by the redemption of the present Collateral Trust Mortgage, or the acquisition of the bonds secured thereby, and by the payment of other debts, the new General Mortgage will have a first lien upon a majority or more of the capital stock of various companies in the system owning 448 miles of railroad, of which 195 miles are leasehold lines included in the 552 miles above stated. These 448 miles embrace properties which are essential to the system, no part of which is covered by the present General Mortgage. The securities thus to be pledged, earned last year an income of \$585,000, of which \$448,000 was actually received by the Philadelphia and Reading Railroad Company in the way of dividends, the remainder being retained for betterments and working capital.

The new mortgage will thus have the security of a vast amount of valuable property in addition to that afforded by the present General Mortgage.

2. **NON-CUMULATIVE 4% FIRST PREFERRED STOCK** for **\$28,000,000**, subject to an increase of \$21,000,000, as hereinafter stated, for substitution for Second Preferred Stock. The First Preferred Stock will entitle the holders to non-cumulative dividends up to 4 per cent. per annum, payable out of net earnings before any dividends shall be paid on the Second Preferred or the Common Stock.

3. **NON-CUMULATIVE 4% SECOND PREFERRED STOCK** for **\$42,000,000**, which will entitle the holders to non-cumulative dividends up to 4 per cent. per annum, payable out of net earnings before any dividends shall be paid on the Common Stock.

4. **COMMON STOCK** for **\$70,000,000**, subject to an increase of \$21,000,000, as hereinafter stated, for substitution for Second Preferred Stock.

All the stock will be divided into shares of \$50 or \$100 each.

Provision will be made that at any time after dividends at the rate of 4 per cent. per annum shall have been paid for two successive years on the First Preferred Stock, the New Company may convert the Second Preferred Stock at par, one-half into First Preferred Stock and one-half into Common Stock.

B.

As a consideration for the property and securities to be conveyed or delivered to the New Company, or which, pursuant to this plan, the New Company shall acquire, it is contemplated that the New Company shall deliver the foregoing bonds and stock, excepting the portions to be held against such of the existing securities as are not disturbed, and such final amounts as shall be reserved for the future use of the New Company.

The requisite deliveries of the new securities to depositors and subscribers under the plan will thus be provided for.

C.

As additional protection to the new General Mortgage bonds, all classes of stock of the new company (except such number of shares as may be disposed of to qualify directors) are to be vested in the following Voting Trustees: J. Pierpont Morgan, Frederic P. Olcott and a third Trustee to be selected hereafter.

In the event of the death of any person designated as a Voting Trustee, prior to the creation of the Voting Trust, the vacancy shall be filled as provided in the Reorganization Agreement. The stock shall be held by the Voting Trustees and their successors, jointly (under a trust agreement prescribing their powers and duties and the method of filling vacancies), for five years, and for

such further period (if any) as shall elapse before the first preferred stock shall have received 4 per cent. cash dividend per annum for two consecutive years, although the Voting Trustees may, in their discretion, deliver the stock at any earlier date. Until delivery of stock is made by the Voting Trustees, they shall issue certificates of beneficial interest entitling the registered holders to receive, at the time therein provided, stock certificates for the number of shares therein stated, and in the meanwhile to receive payments equal to the dividends collected by the Voting Trustees upon the number of shares therein stated, which shares, however, with the voting power thereon, shall be vested in the Voting Trustees until the stock shall become deliverable, as provided in such certificates of the Voting Trustees.

Provision is to be made that no additional mortgage shall be put upon the property to be acquired hereunder, nor the amount of the First Preferred Stock authorized under this Plan be increased, except with the consent, in each instance, of the holders of a majority of the whole amount of each class of Preferred Stock, given at a meeting of the Stockholders called for that purpose, and with the consent of the holders of a majority of such part of the Common Stock as shall be represented at such meeting, the holders of each class of stock voting separately; also that the amount of the Second Preferred Stock shall not be increased except with like consent by the holders of a majority thereof, and a majority of such part of the Common Stock as shall be represented at the meeting. During the existence of the voting trust, the consent of holders of like amounts of the respective classes of beneficial certificates shall also be necessary for the purposes indicated.

The New Company may reserve the right to redeem at any time either or both classes of its Preferred Stock at par in cash, if allowed by law.

D.

THESE NEW BONDS AND STOCK TRUST CERTIFICATES are intended to be used as shown in the accompanying Tables (subject only to such changes as may be necessary for the effective carrying out of the plan), viz.:

BONDS.

For Undisturbed bonds (see Table C) ..	\$44,550,000 00
“ Present General Mortgage bonds (exclusive of about \$1,900,000 pledged as collateral	44,575,000 00
“ Delivery to Syndicate	4,000,000 00
“ New construction, additions and betterments, additional equipment, etc., under carefully guarded restrictions, not over \$1,500,000 to be used in any one year. These bonds will be used only in such manner as additionally to secure the new mortgage	20,000,000 00
“ Contingencies (any surplus to go to new Company)	875,000 00
	<u>\$114,000,000 00</u>

FIRST PREFERRED STOCK.

For First Preference Income bonds.....	\$7,184,000 00
“ Delivery to Syndicate.....	8,000,000 00
“ Reserve for adjustment with various outstanding bondholders, creditors and stockholding interests, Commission to Refunding and Guarantee Syndicates, and Contingencies (the surplus to go to the new Company)	12,816,000 00
	<u>\$28,000,000 00</u>

SECOND PREFERRED STOCK.

For First, Second and Third Preference	
Income bonds	\$40,286,000 00
“ Contingencies (the surplus to go to the new Company)	1,714,000 00
	<hr/>
	\$42,000,000 00
	<hr/>

COMMON STOCK.

For Income bonds and Stock.....	\$69,598,000 00
“ Contingencies (the surplus to go to the new Company).....	402,000 00
	<hr/>
	\$70,000,000 00
	<hr/>

The undisturbed bond issues of the Reading system cannot be compulsorily retired prior to their maturity; therefore, reservation of New General Mortgage bonds is made to provide for them as shown above. The security for the present General Mortgage bonds is ample, but a reorganization has become necessary through the creation of debts which have proved a drain upon the resources of the Company and have necessitated a diversion of its income.

DISTURBED SECURITIES AND BASIS OF EXCHANGE.

The securities disturbed in this reorganization are:

General Mortgage 4% Bonds.....	\$44,602,188
1st Preference Incomes.....	23,949,735
2nd Preference Incomes.....	16,176,072
3rd Preference Incomes.....	16,634,462
Capital Stock	41,373,662
Deferred Incomes	20,751,590

The basis of their exchange is as follows:

	RECEIVE:				
	Cash.	New General Mortgage Bonds.	First Preferred Stock Trust Certificates.	Second Preferred Stock Trust Certificates.	Common Stock Trust Certificates.
General Mortgage Bonds ("stamped" receipts heretofore issued by Central Trust Company when "assented"†).	2%*	100%			
General Mortgage Bonds ("unstamped" receipts heretofore issued by Central Trust Company when "assented"†).	12%†	100%			
General Mortgage Bonds heretofore undeposited (when deposited in exchange for assented receipts of Central Trust Company)	12%†	100%			
First Preference Income Bonds¶.....	On payment of assentment as stated on page 2	.....	30%	100%	
Second Preference Income Bonds¶....		.....	.....	65%	55%
Third Preference Income Bonds¶.....		.....	.....	35%	85%
Stock¶.....		.....	.....	.....	100%
Deferred Income Bonds¶.....		.....	.....	.....	20%

*For January, 1896, coupon, payable on or before completion of the reorganization, with interest from January 1, 1896.

The equitable interest certificates hereto issued will be paid in cash at 105 per cent. and interest, on or before completion of the reorganization.

†The 12 per cent. in cash represents coupons from July 1, 1893, to January 1, 1896, and is payable on or before completion of the reorganization, but bears interest at six per cent. per annum from the dates of maturity of the respective coupons until paid. By means of this payment the "unstamped" certificates and heretofore undeposited bonds are placed upon the same footing as the "stamped" certificates.

‡In order to "assent" holders of these receipts must present them for "stamping" as indicated on page 2 of plan.

§All existing receipts for these securities must be exchanged as indicated on page 2 of plan.

The foregoing percentages are based upon the principal amount of the bonds. Undeposited bonds must be deposited with all unpaid coupons.

These new bonds will be for \$1,000 each. Interest will start from January 1st, 1896 (first coupon to mature July 1st, 1896), and will be at four per cent. per

annum. Equitable cash settlement will be made for fractional amounts of new bonds and stock accruing to depositors.

THE ASSESSMENTS on the First, Second and Third Preference Income Bonds on the stock and on the Deferred Income Bonds are:

20 per cent. on First, Second and Third Preference Incomes.

20 per cent. on Stock.

4 per cent. on Deferred Incomes.

A SYNDICATE has been formed by Messrs. J. P. Morgan & Co., J. Kennedy Tod & Co., Hallgarten & Co., and A. Iselin & Co., which definitely agrees:

1. To underwrite the payment of the assessments on the Income bonds and Stock of the present Railroad Company, the Syndicate to acquire all the rights of holders of Income bonds and Stock who shall not deposit their stock and pay the assessments thereon.
2. To take \$4,000,000 of the new General Mortgage bonds and \$8,000,000 of the new First preferred stock.
3. To guarantee the extension or payment of the Improvement Mortgage bonds and of the Coal and Iron Company bonds, most of which will mature within the next two years.

The financial requirements, not only of the reorganization, but of the New Company, as stated above, are thus fully provided for.

The compensation to Messrs. J. P. Morgan & Co. for their services as Managers of the plan and to their above-named associates in the formation of the Syndi-

cate, has been fixed at \$650,000 in addition to all expenses incurred.

CASH REQUIREMENTS AND PROVISION THEREFOR.

The estimated requirements of the plan (including General Mortgage interest up to January 1, 1896) are as follows:

Floating Debt	\$3,800,000 00	
Receivers' Certificates.	3,800,000 00	
Car Trust and Equip- ment Notes	7,300,000 00	
Equitable Interest Cer- tificates and Accrued Interest on un- stamped General Mortgage Trust Cer- tificates and non-de- posited General Mort- gage Bonds about...	6,250,000 00	
Arrearages of Sinking Fund, Divisional Coal Mortgages ...	2,000,000 00	
Reorganization and other expenses, in- cluding commissions to Bankers, unfore- seen items, etc. (any surplus to go to new Company)	2,000,000 00	
		\$25,150,000 00
The assessments will yield	\$20,862,289 00	
The Syndicate will con- tribute in cash.....	7,300,000 00	
		28,162,289 00
Leaving an estimated cash balance of about		\$3,000,000 00

to be used for the purposes of the new Company.

POSITION OF NEW COMPANY.

The annual fixed charges of the reorganized system (see Appendix, Table B) will be about \$9,300,000. An almost immediate reduction of nearly \$500,000 per annum in these fixed charges will, however, be effected through the refunding or extension by the syndicate at 4 to 4½ per cent. of some \$20,000,000 6 per cent. and 7 per cent. bonds shortly to mature, and the extension already effected by the Receivers, at 4 per cent., of \$1,500,000 North Pennsylvania bonds which now bear 7 per cent.

The net earnings of the system for the past four years, terminating November 30th, were:

1892	\$12,472,190 61
1893	11,172,690 56
1894	9,839,971 32
1895 (estimated as to November).....	9,624,123 00

Except for the annual interest charge of about \$105,000, which is now being created through the construction, in connection with the City of Philadelphia, of the Pennsylvania Avenue subway in that city, and the further interest obligations which may gradually arise through the yearly issuance of not exceeding \$1,500,000 of new General Mortgage 4% Bonds for new construction, betterments, etc. (as hereafter required to develop the business), no reason is believed to exist for any increase in the fixed charges of the Reorganized Company.

The New Company will start without floating debt and will be relieved from the embarrassment of Car Trusts which during the last five years have absorbed upwards of \$4,500,000 from its net income, which otherwise might have been free to conserve the property. These Car Trusts, unless provided for, as a part of a comprehensive plan of reorganization, will further absorb over \$7,300,000 additional in the next five years. The new fixed charges will be well within the net income of the system even in the past years of extreme depression, and the New Company will start not only with a substantial working cash capital, but also with power to provide facilities for the increase of business.

APPENDIX.

TABLE A.

PRESENT ANNUAL FIXED CHARGES.

The present fixed charges of both Companies aggregate \$10,035,073, made up as follows:

Interest on Prior Liens including interest on Bonds and Mortgages on Real Estate.....	\$2,666,509
Interest on General Mortgage Bonds.....	1,788,607
Interest on Terminal Loan.....	425,000
Rentals (about).....	2,876,040
Interest Coal & Iron Co.....	1,051,017
Taxes	350,000
	<hr/>
	\$9,157,173
Interest on floating debt and Receivers' certificates...	441,940
Interest on Car Trusts and Equipment Notes.....	435,960
	<hr/>
<i>Total present Fixed Charges.....</i>	<i>\$10,035,073</i>

TABLE B.

ANNUAL FIXED CHARGES AFTER REORGANIZATION.

	Capital	Interest
Prior Mortgage Loans.....	\$5,241,700	\$286,357
Cons. Mortgage Loan, 1871-1911.....	18,811,000	1,235,150
Improvement Mortgage Loan.....	9,364,000	561,840
Cons. Mortgage Loan, 1882-1922.....	5,768,577	288,375
General Mortgage Loan.....	44,715,188	1,788,607
“ “ “ \$4,000,000, new..	4,000,000	160,000
Terminal R. R. Loan.....	8,500,000	425,000
Collateral Sinking Fund Loan.....	1,831,000	91,550
Bonds and Mortgages on Real Estate.....	3,532,896	203,237
Taxes		350,000
Rentals (about).....		2,876,040
Coal and Iron Co. Divisional and Real Estate Mortgages.....	12,383,608	743,017
Coal and Iron Co. Coal Trust Certificates..	4,300,000	258,000
Coal and Iron Co. Commission of Finance Co. of Pennsylvania.....		50,000
		<hr/>
<i>Total new Fixed Charges.....</i>		<i>\$9,317,173</i>
		<hr/>
<i>DECREASE IN ANNUAL FIXED CHARGE.....</i>		<i>\$717,900</i>

Application to List on New York Stock Exchange (Old Record, Government Exhibit 4, printed, Vol. II, pp. 306-316).

READING COMPANY,

READING TERMINAL, TWELFTH AND MARKET STREETS,
PHILADELPHIA, March 24, 1897.

TO THE COMMITTEE ON STOCK LIST

NEW YORK STOCK EXCHANGE:

The railroads, property and corporate franchises of The Philadelphia and Reading Railroad Company, and the coal lands and property of The Philadelphia and Reading Coal and Iron Company, included under the General Mortgage made by said two companies under date of January 3, 1888, were sold by the Trustees of that mortgage by virtue of their powers and of the decree of the Circuit Court of the United States, on the 23d day of September, 1896, to Charles Henry Coster and Francis Lynde Stetson.

On the same day all the other assets and property of the Railroad Company and the Coal and Iron Company were sold under the same decree by the Receivers to the same purchasers.

These sales were duly confirmed by the Court, and conveyances and transfers of all the property were duly made and delivered, vesting in the purchasers an absolute title, free and discharged of all the liens and charges, except the prior mortgages and charges and expenses particularly mentioned in said decree.

ORGANIZATION.

A large part of the property so purchased was conveyed by the Purchasers to the Reading Company. All of the remainder (with a few unimportant exceptions) was conveyed to the Philadelphia and Reading Railway Company and The Philadelphia and Reading Coal and Iron Company, and the Reading Iron Company.

READING COMPANY.

The Excelsior Enterprise Company was incorporated by an Act of Assembly of the State of Pennsylvania, approved May 24, 1871. On January 18, 1873, in pursuance of power conferred by the charter, the stockholders changed the name to "National Company"; and on December 7, 1896, in like manner, the name was changed to "Reading Company."

The validity of this charter and its sufficiency for the purposes of this reorganization were considered by the following counsel, viz.: Messrs. George F. Baer, J. D. Campbell, Thomas Hart, Jr., Francis Lynde Stetson, Victor Morawetz, John G. Johnson, Samuel Dickson, James Boyd, George L. Rives, F. W. Whitridge, Hon. Edward M. Paxson and Hon. Edward J. Phelps, and a copy of their joint opinion is submitted herewith. Said opinion concludes as follows:

"In our opinion, the READING COMPANY can legally acquire, receive and hold, and can mortgage and pledge, all the stocks, securities and properties, including the capital stocks of the New Railway Company and of the Coal and Iron Company; and it can keep and perform all the covenants and conditions under which, severally and respectively, these two companies acquired their properties from the Purchasers. By a further increase of its capital,* the READING COMPANY can legally issue the Common and Preferred Stock, and the Bonds required by the Plan of Reorganization; and, to secure the payment of these bonds, it can lawfully pledge and mortgage the stock, securities and properties by it so acquired."

The Attorney General of the State of Pennsylvania, having subsequently questioned the validity of the charter and having instructed the State officials not to accept certain franchise-moneys, the facts of the case were laid

* This increase has been duly made.

before him, and his opinion is also submitted. While questioning certain powers which it is not intended to use, he says:

"After due consideration, I reach the conclusion, most reluctantly, that the Commonwealth of Pennsylvania cannot now successfully attack the chartered rights of the READING COMPANY; at least, the rights of such a nature and character as had been exercised by the corporation prior to January 1, 1874. It had power to do the business in which it was engaged prior to the adoption of the new Constitution."

* * * * *

"My view of the whole matter is that the charter of the Company authorized it to do the kind of business in which it engaged prior to January 1, 1874, which business was of the same general character as that in which it proposes to engage for the purpose of controlling the stocks of the Railway Company and the Coal and Iron Company."

THE CAPITAL STOCK OF THE READING COMPANY consists of 2,800,000 shares of \$50 each (\$140,000,000), of which

560,000 shares (\$28,000,000) are first preferred,
non-cumulative 4 per cent.;

840,000 shares (\$42,000,000) are second preferred,
non-cumulative 4 per cent.;

1,400,000 shares (\$70,000,000) are common,

all of which (except the original issue of 1,000 shares for cash), as well as bonds as hereinafter stated, have been issued for property acquired. The recipients of said stock have deposited same (except 2,000 shares of common stock) with Messrs. J. Pierpont Morgan and Frederic P. Olcott, of New York, and Henry N. Paul, of Philadelphia, as Voting Trustees, under an agreement which provides that it shall be held by them until January 1, 1902, and for such further period (if any) as shall elapse before the first preferred stock shall have received 4 per cent. per annum cash dividend for two consecutive years, although the Voting Trustees may, in their discretion, deliver the stock at any earlier date. Until delivery of

stock is made by the Voting Trustees they shall issue certificates of beneficial interest entitling the registered holders to receive, at the time therein provided, stock certificates for the number of shares therein stated, and in the meanwhile to receive payments equal to the dividends collected by the Voting Trustees upon the number of shares therein stated, which shares, however, with the voting power thereon, are vested in the Voting Trustees until the stock shall become deliverable, as provided in such certificates of the Voting Trustees.

The stock certificates provide in substance that no additional mortgage shall be put upon the property acquired under the plan of reorganization, nor shall the amount of the first preferred stock authorized under said plan be increased, except with the consent, in each instance, of the holders of a majority of the whole amount of each class of preferred stock, given at a meeting of the stockholders called for that purpose, and with the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately; also that the amount of the second preferred stock shall not be increased except with like consent by the holders of a majority thereof, and a majority of such part of the common stock as shall be represented at the meeting; except that at any time after dividends at the rate of 4 per cent. per annum shall have been paid for two consecutive years on the first preferred stock, the Company may convert the second preferred stock at par, one-half into first preferred stock and one-half into common stock, and may increase said classes of stock by the necessary amounts. During the existence of the voting trust the consent of holders of like amounts of the respective classes of beneficial certificates is also necessary for any increase of stock other than for the purpose indicated.

The Reading Company reserves the right to redeem at any time either or both classes of its Preferred Stock at par in cash, if allowed by law.

The READING COMPANY owns and has pledged for its mortgage hereinafter mentioned:

A.—Railway Equipmen valued at.....	\$16,950,000 00	
Real Estate of Railroad Company (this does not include rights of way, depots, &c., or any real estate appurtenant to the railroads) valued at.....	16,000,000 00	
Colliers and Barges valued at.....	1,450,000 00	
		\$34,400,000 00

The details of the Equipment are as follows:

	Number.	Value.
Railroad Locomotives.	791	\$3,874,339 80
Railroad Cars.....	29,625	13,110,666 39
Marine Boats	118	1,439,850 00
Canal Boats	50	19,700 00
		\$18,444,556 19

(The old mortgages of the Philadelphia and Reading Railroad Company attach to most of this property.)

B.—Stocks and Bonds:

Stock of Philadelphia and Reading Railway Company, at par.....	\$20,000,000 00
Bond of Philadelphia and Reading Railway Company, at par.....	20,000,000 00
Stock of The Philadelphia and Reading Coal and Iron Co. at par.....	8,000,000 00
Stock of The Reading Iron Company, at par	1,000,000 00
Other stocks and bonds (as per schedules annexed) which control about 275 miles of railroad, at par.....	38,488,246 00

87,448,246 00
*266,594 11

C.—Mortgages and Ground Rents, at par.....

D.—Philadelphia and Reading Coal and Iron Co.:

Assets as shown by its books.....	\$95,435,453 79
Less bonds, &c.....	\$17,874,606 46
“ current liabilities.	1,406,168 34
“ stock of P. & R. C. and I. Co. included in “stocks and bonds”.	8,000,000 00
	27,280,774 80

68,154,673 93
3,343,282 53

E.—Claims against other Companies (see schedule annexed)..

F.—Other Stocks and Bonds:

SCHUYLKILL NAVIGATION COMPANY.*	
Preferred and Common Stock.....	\$3,941,800 00
SUSQUEHANNA CANAL CO.*	
Bonds and Stock.....	3,848,160 94

\$7,789,960 94

Valued at 1,000 00
Estimated worth (“A” being subject to undisturbed bonds as stated further on)..... \$193,613,962 00

* These are not under the mortgage of Reading Co. and Coal and Iron Co.

It will be observed that among the principal assets of the Reading Company is its ownership in the securities of the Philadelphia and Reading Railway Company and The Philadelphia and Reading Coal and Iron Company. By means of the former, the practical ownership of the Railway Company is vested in the Reading Company. The mortgage securing the bond of the Railway Company provides for additional bonds up to \$10,000,000, which, together with like amounts of capital stock, may be issued from time to time *to the Reading Company* in order to enable the latter to deposit same under *its* mortgage and obtain the issue of a like amount of the reserved bonds thereunder, when and as the Reading Company advances money for new construction, &c., upon the lines of the Railway Company and of certain of the companies leased or controlled by it. In this way the lien of the Reading Company's mortgage on the property of the Railway Company is constantly preserved and strengthened. The Railway Company's mortgage is stringent in its provisions and allows the issue of the \$10,000,000 bonds only in a manner and for purposes which are consistent with the provisions of the Reading Company mortgage.

PHILADELPHIA AND READING RAILWAY COMPANY.

In pursuance of the Acts of Assembly of the State of Pennsylvania of May 31, 1887, the before-mentioned purchasers of the railroad property organized a new corporation under the name of "PHILADELPHIA AND READING RAILWAY COMPANY;" and conveyed to it certain railroads and properties acquired by them at the foreclosure sale, in consideration, among other things, of the issue of the entire capital stock (\$20,000,000) and of \$20,000,000 bonds secured by mortgage.

It owns Railroad (but no equipment) of an aggregate length of 390.99 miles.

Of which about 180 miles are double-tracked.

It has acquired Leases of.....597.00 miles.

Of which about 186 miles are double-tracked.

It leases from "Reading Company":

Equipment, \$16,950,000 @ 8% (and taxes).....

Colliers and Barges, \$1,450,000 @ 8% (and taxes)....

Delaware River Wharves @ \$50,000 per annum.....

There are undisturbed bonds of the P. & R. R. R. Co. on the property of the Railway Company as follows:

	Principal.	Interest.
Prior Mortgage Loans.....	\$5,241,700 00	\$286,357 00
Consolidated Mortgage Loans.....	18,811,000 00	1,235,150 00
Improvement " " @ 4% ...	9,364,000 00	374,560 00
Consol. Mortgage of 1882, 1st series, @ 4%	5,767,042 00	230,682 00
Consol. Mortgages of 1883, 2d series....	1,535 00	
Terminal Loan, @ 5%.....	8,500,000 00	425,000 00
Bonds and Mortgages on Real Estate..	844,871 35	41,439 00
	<hr/> \$48,530,148 35	<hr/> \$2,593,188 00
The Company is also liable for Subway Bonds of the City of Philadelphia (ultimately to be increased to \$3,000,000, @ 3½%).....	300,000 00	10,460 00

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

The decree of confirmation and the conveyances above referred to expressly excepted and released the corporate franchises of The Philadelphia and Reading Coal and Iron Company, so that these corporate rights and powers have been preserved to it; and the Purchasers conveyed to that Company the principal part of its former property upon condition and in consideration, among other things, that the Coal and Iron Company should become co-obligor in the bonds to be created and issued by the "Reading Company" under the Plan of Reorganization, and to secure such bonds, should make and execute a mortgage on all its properties and franchises.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY

A.—Owns:	
Coal lands.....	.95,144 acres.
Valued on the books at.....	\$76,294,997 80
B.—Leases:	
Coal Lands	7,429 acres.
C.—Also owns:	
Timber Lands	\$659,965 00
Eastern Depots	710,724 34
Western Depots	657,709 35
Coal on hand, and other Current Assets...	7,414,232 30

9,442,630 99

Stocks of separate coal companies, viz.:

The Preston Coal and Improvement Co.	\$2,834,150 00
The Fulton Coal Company	317,685 00
The Locust Gap Improvement Co.	525,220 00
The Tremont Coal Company	2,958,850 00
The Mammoth Vein Coal and Iron Company....	604,270 00
The Delaware Coal Company	261,650 00

Nearly all of these Stocks are subject to the Consolidated Mortgage of 1871-1911.

All are covered by new mortgage. See Schedule A.

7,501,825 00

Bonds of separate coal companies:

Preston Coal and Improvement, 7% Mortgage Bonds.....	\$1,087,000
Tremont Coal Co., 6% Mortgage Bonds	900,000
Mammoth Vein Coal and Iron Co., 8% Mortgage Bonds....	209,000

(These are Collateral for Sinking Fund Loan of \$1,774,000; also covered by new mortgage. See Schedule A)

2,196,000 00

\$95,435,453 79

D.—It owes for Bonds matured and maturing. \$12,050,606 46

{ For which bonds of the New General Mortgage are to be substituted.

E.—It assumes Coll. Sinking Fund Loan of 1892 of R. R. Co..... 1,774,000 00

F.—It owes Coal Trust Certificates (\$4,300,000 —\$250,000) 4,050,000 00

G.—Current Liabilities 1,406,168 34

\$19,280,774 80

EARNINGS AND FIXED CHARGES.

Stated in detail, on completion of reorganization the results of the three companies will show as follows:

READING COMPANY.

ESTIMATE OF FIXED CHARGES OF READING COMPANY:

Railroad Company mortgages on real estate	\$2,276,491 65	\$110,000 00
New Bonds.....	50,369,054 00	2,014,762 00
		<hr/>
		\$2,124,762 00
Taxes, &c., say		200,000 00
		<hr/>
		\$2,324,762 00

ESTIMATE OF INCOME OF READING COMPANY (BASED ON 1896 RESULTS):

From Railway Company for rental of equipment, colliers, etc.	\$1,472,000 00	
From Railway Company for rental of Delaware wharves	50,000 00	
From Railway Company interest (\$20,000,000)	1,200,000 00	
“ securities	781,023 00	
“ real estate (formerly of railroad company)	125,000 00	
	<hr/>	3,628,023 00
Surplus		\$1,303,261 00

RAILWAY COMPANY.

Interest on undisturbed bonds, etc.....	\$2,603,648 00
“ “ \$20,000,000 bond held by Reading Company.....	1,200,000 00
Rentals (railroads), say	3,100,000 00
“ (equipment, colliers and wharves) as above, say.....	1,522,000 00
Taxes	175,000 00
Sundries	75,000 00
	<hr/>
Total fixed charges of Railway Company, say.....	\$8,675,648 00
Property now controlled by Railway Company, earned, net, in year ending November 30, 1896.....	8,805,807 00
	<hr/>
Surplus	\$130,159 00

COAL AND IRON CO.

Interest on

\$12,050,000 New General Mortgage 4s to replace Outstanding Div. Coal Land Bonds and Mortgages	\$482,000
Coal Trust Certificates, \$4,050,000, @ 6%....	243,000
Coal Trust Commission	50,000
	<hr/>
	\$775,000 00

Interest on Collateral Sinking Fund Loan, \$1,774,000, @ 5%

88,700 00

Total	\$863,700 00
Net earnings, year ending November 30, 1896.....	238,344 00

Deficit

\$625,356 00

EARNINGS OF ALL COMPANIES IN YEAR ENDING NOVEMBER 30, 1896.
(After paying all Fixed Charges as they will stand on Completion of Plan.)

	DEFICIT.	SURPLUS.
Railway Company		\$130,159 00
Coal and Iron Company.....	\$625,356 00	
Reading Company		1,303,261 00
Surplus, all Companies (to balance).....	808,064 00	
	<u>\$1,433,420 00</u>	<u>\$1,433,420 00</u>

Stated in the simpler form, which was adopted in the plan of reorganization, and eliminating all accounts between the three companies:

NET EARNINGS

of entire property (including income from all sources) in year ending November 30, 1896, were \$9,480,736

FIXED CHARGES

of entire property on completion of reorganization will be..... \$8,672,672

For the present year, pending completion of refunding schemes, etc., they will be, perhaps, \$300,000 @ \$400,000 more.

Referring to the Plan of Reorganization, dated December 14, 1895, it will be noticed on page 10 thereof, that the fixed charges after reorganization, are stated at about..... \$9,300,000
Add for subway so far accrued..... 10,460

The plan further states that by refunding of high-rate bonds, &c., these charges will be reduced by about..... \$9,310,460
500,000

Making \$8,810,460

the ultimate fixed charge under the plan. Under the plan as actually carried out, they will not be over \$8,672,672.

The accounts of all the Companies, as reorganized, have started from November 1, 1896. Eliminating all accounts between the three companies; the results since then are substantially the same as for the corresponding period of last year.

MORTGAGE.

Under date of January 5, 1897, the Reading Company and The Philadelphia and Reading Coal and Iron Company executed a joint mortgage to the Central Trust Company of New York,

The mortgage contains stringent provisions regulating the use of the new bonds, of the same general character as those in the Southern Railway Company, Erie Railroad Company and Northern Pacific Railway Company mortgages—with such changes, of course, as are necessary for the requirements of this particular case.

Excepting the mortgages and ground rents, of an aggregate value of \$266,594.16, and the Canal securities, valued at \$1,000, the mortgage covers all the property, including stocks and bonds (excepting such few shares of stock as qualify directors, etc.), owned by the Reading Company, as hereinbefore described, and all the property of the Coal and Iron Company; also, all property hereafter acquired by use of the \$20,000,000 reserved bonds.

For a better understanding of the matter it may be stated, in general terms, that, either by way of direct mortgage or collateral trust, the new mortgage has the security of substantially all of the property formerly of The Philadelphia and Reading Railroad Company, and of The Philadelphia and Reading Coal and Iron Company, as acquired under the Court's decree above mentioned, subject to \$64,630,946 of outstanding bonds, which constitute prior liens on parts thereof, and of which \$12,050,606 are now being paid off, so that the prior liens will shortly be reduced to about \$52,500,000. In addition to thus reducing the prior liens, the new mortgage also covers a vast amount of property of large present earning capacity, which was not included in the former General Mortgage, as for instance the stocks and bonds which were under the former Collateral Trust (now paid off), and which yield a present annual income of fully \$500,000. Also Equipment costing about \$10,000,000, most of which was formerly under Car Trusts, etc.

The bonds issued and to be issued under said mortgage are payable, principal and interest, at the office or agency of the Reading Company in the City of New York, in gold coin of the United States of the present standard

of weight and fineness, without deduction for any tax or taxes of the United States or any State or Municipality thereof which the Companies, or either of them, may be required to pay or to retain therefrom under any present or future law. The principal is due January 1, 1997, and the interest July first and January first in each year, at four per cent. per annum. The bonds are in coupon form of \$1,000 each, with right of registration of principal and with right of conversion into registered bonds of \$500, \$1,000, \$5,000 and \$10,000. Such registry and conversion may be made at the office of Messrs. J. P. Morgan & Co., in New York.

The mortgage provides that

the Reading Company shall not and will not in any year declare or pay dividends upon its stock, either common or preferred * * * unless prior to, or simultaneously with, such declaration, it shall deliver to the Trustee a statement in writing under its corporate seal, showing the amount of anthracite coal mined, from lands owned by the Coal Company and mortgaged hereunder during the year next preceding the declaration of such dividend, and simultaneously shall pay to the Trustee a sum equal to five cents per ton on all coal so mined in the preceding year, if the aggregate of dividends so declared shall be equal to or shall exceed such sum, and otherwise such lesser sum as shall be equal to the aggregate of dividends so declared.

All sums so received by the Trustee shall * * * be applied in purchasing bonds secured by the mortgage in such manner as to it shall seem best and at such prices as it shall deem best, but not exceeding par and accrued interest * * * or with the approval of the Reading Company at higher prices than those above fixed; or such unapplied balance shall be invested in securities in which Savings Banks at such time shall be authorized under the laws of New York to invest their funds, such securities to be held by the Trustee as a part of the trust estate * * *

All bonds secured by the mortgage, when so purchased by the Trustee, shall be canceled.

There are submitted herewith :

Copy of mortgage, with usual certificates.

“ “ stock certificates.

“ “ voting trust agreement.

Schedule of stocks and bonds owned.

“ “ equipment.

“ “ claims against other Companies.

Balance Sheets of the three Companies December 1, 1896.

Opinion of 12 counsel as to Reading Company's charter and powers.

Opinion of Attorney General of Pennsylvania as to same.

Opinion of counsel as to new stocks and bonds.

Engineers' certificate.

Specimens of Bonds, Stock Trust Certificates and Discharge Warrants.

Application is hereby made for the listing of \$62,419,000 bonds of the Reading Company and of the Philadelphia and Reading Coal and Iron Company, being coupon bonds Nos. 1 to 62,419, inclusive, of \$1,000 each, issued under their joint mortgage of January 5, 1897, and of the registered bonds into which same may be converted.

The bonds for which a quotation is now desired are those issuable at once, as stated above—viz. \$50,369,000—and those which are now being used for the retirement and cancellation of the Coal and Iron Company bonds generally known as Divisional Bonds—viz., \$12,050,606.

Of the \$50,369,000 bonds, about \$45,000,000 represent the old General Mortgage bonds deposited under the plan, and the remainder are sold for cash or used for other purposes of the reorganization pursuant to the plan.

EXCHANGE OF SECURITIES.

The basis of exchange of the old securities for new securities, pursuant to the before-mentioned plan of reorganization, is as follows:

OLD SECURITIES.	RECEIVE :			
	New General Mortgage Bonds	First Preferred Stock Trust Certificates	Second Preferred Stock Trust Certificates	Common Stock Trust Certificates
General Mortgage Bonds (in addition to all back interest in cash.....)	100%			
First Preference Income Bonds..... (20% assessment paid).	30%	100%	
Second Preference Income Bonds..... (20% assessment paid).	65%	55%
Third Preference Income Bonds..... (20% assessment paid).	35%	85%
Stock..... (20% assessment paid).	100%
Deferred Income Bonds..... (4% assessment paid).	20%

OFFICERS AND DIRECTORS.

The Directors of the Reading Company are as follows: Joseph S. Harris, A. J. Antelo, Thomas McKean, Chas. H. Coster, Francis Lynde Stetson, Geo. F. Baer, John Lowber Welsh, Albert Foster, George C. Thomas. Officers: President, Joseph S. Harris; Vice-President, W. R. Taylor; Treasurer, W. A. Church; Secretary, W. G. Brown.

The Directors of The Philadelphia and Reading Coal and Iron Company are as follows: C. Tower, Jr., Chas. H. Coster, Thomas McKean, John Lowber Welsh, George F. Baer, George C. Thomas. Officers: President, Joseph S. Harris; Vice-President, W. R. Taylor; Treasurer, W. A. Church; Secretary, F. P. Kaercher; Assistant Secretaries, H. C. Russell and W. G. Brown; General Manager, C. E. Henderson; General Coal Agent, Thos. M. Richards; General Superintendent, R. C. Luther.

The Directors of the Philadelphia and Reading Railway Company are as follows: Chas. H. Coster, Francis Lynde Stetson, John Lowber Welsh, George F. Baer, George C. Thomas, Thomas McKean. Officers: President, Joseph S. Harris; First Vice-President, Theodore Voorhees; Second Vice-President, C. E. Henderson; Treasurer, W. A. Church; Secretary, W. R. Taylor.

READING COMPANY,

By

JOS. S. HARRIS, President.

THE PHILADELPHIA AND READING COAL
AND IRON COMPANY,

By

JOS. S. HARRIS, President.

NEW YORK, March 24, 1897.

Referring to the foregoing application of the Reading Company and The Philadelphia and Reading Coal and Iron Company, application is further made for the listing of Voting Trustees' Certificates, as therein described, representing:

560,000 shares (par \$50) first preferred, non-cumulative, 4 per cent. stock.....	} of the Reading Company.
840,000 shares (par \$50) second preferred, non-cumulative, 4 per cent. stock.....	
1,398,000 shares (par \$50) common stock.....	

These certificates are issued and transferred in New York by J. P. Morgan & Co., as agents for the Voting Trustees, and are registered there by the Central Trust Company as registrar of transfers. They are also issued and transferred in Philadelphia by Drexel & Co. as such agents, and registered there by The Pennsylvania Company for Insurances on Lives and Granting Annuities as such registrars. Certificates issued in either place may be discharged to the other at the office of the agents for the Voting Trustees.

J. P. MORGAN & Co.,
Agents for Voting Trustees.

PHILADELPHIA AND READING RAILWAY COMPANY.

BALANCE SHEET, DECEMBER 1, 1896.

RAILROAD	\$80,029,849 19		
PHILADELPHIA TERMINAL	8,500,000 00		
PHILADELPHIA SUBWAY	300,000 00		
CURRENT BUSINESS ASSETS:			
Cash	\$1,061,291 08		
Materials on hand	942,778 81		
	2,004,069 89		
			\$5,241,700 00
MORTGAGE DEBTS ON PROPERTY:			
Prior Mortgage Loans—			
6% \$ Mtge. Loan, 1843-1910, Coupon			\$967,200 00
6% " " " 1843-1910, "			545,500 00
6% " " " 1844-1910, "			795,000 00
6% " " " 1848-1910, "			92,000 00
6% " " " 1849-1910, "			67,000 00
4 1/2% \$ Mtge. Conv. Loan, 1857-1886 Coupon			1,000 00
4 1/2% " " " 1857-1910			78,000 00
5% " " " 1868-1893, 1933			2,696,000 00
			\$6,999,000 00
Consolidated Mortgage Loan, 1871-1911—			
6% gold \$ or £ coupon			305,000 00
6% " " registered			858,000 00
6% " " "			3,339,000 00
7% " " coupon			7,310,000 00
			18,811,000 00
Improvement Mortgage Loan, 1873-1897—			
6% gold \$ or £ coupon			9,364,000 00
Five Per Cent. Consols Mtge. Loan, 1882-1922, First Series—			
5% gold \$ coupon			\$5,766,500 00
5% " " fractional scrip			542 00
			5,767,042 00
Five Per Cent. Consols Mtge. Loan, 1882-1922, Second Series—			
5% gold \$ coupon			\$1,000 00
5% " " fractional scrip			535 00
			1,535 00
Bonds and Mortgages on Real Estate			
Philadelphia and Reading Terminal R. R. Loan, 1891-1941—			844,572 19
5% gold \$ coupon			8,500,000 00
Six Per Cent. Mortgage Loan, 1896-1997, gold \$ registered			*20,000,000 00
			\$88,529,849 19
Total Mortgage Loans			
CITY OF PHILADELPHIA SUBWAY LOAN, GUARANTEED—			
3% due December 31, 1904			\$8,000 00
3 1/2% due December 31, 1904			142,000 00
3 1/2% due December 31, 1905			150,000 00
			300,000 00
CAPITAL STOCK			
CONTINGENT ACCOUNT (to be adjusted on completion of reorganization)			
			*20,000,000 00
			2,004,069 89
			\$90,832,919 08

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.
GENERAL BALANCE SHEET, DECEMBER 1, 1896.

CAPITAL ACCOUNTS.		AMOUNT	TOTAL	CAPITAL ACCOUNTS.		AMOUNT.	TOTAL.
Coal Lands.....		\$61,773.116 90		Divisional Coal Land Mortgage Bonds:		\$8,640,000 00	
Timber Lands.....		693,965 00		1872-1897.....		150,000 00	
New York and Eastern Depots.....		710,734.34		1872-1902.....		284,000 00	
Western Yards and Depots.....		637,719.85		1874-1884.....		304,000 00	
Miners' and other Houses.....		545,987 67		1874-1890.....		1,240,000 00	
Pottsville Shops, Real Estate and Improve- ments.....		366,640.74		1876-1890.....		156,000 00	
Other Real Estate.....		84,759 83		1882-1902.....		162,000 00	
Improvements at Collieries on Company's Lands.....		4,797,019.79		1883-1898.....		310,000 00	
Improvements at Collieries on Leased Lands.		2,261,670.53		1883-1898.....		160,000 00	
Equipments at Collieries.....		2,302,467 63		1884-1904.....		327,000 00	
Deadwork at Collieries.....		3,711,477 31		1892-1897.....		30,000 00	
Storage Yards and Washeries.....		439,898 40		1898-1908.....		24,500 00	
Stocks of Companies controlled.....		7,501,823 00		Bonds and Mortgages on Real Estate.....		\$277,108 46	\$31,477,500 00
Bonds of Companies controlled.....		2,196,000 00	\$88,021,221 40	Albright Mortgage, 1902.....		296,000 00	
ASSETS.				Debenture Bonds.....			573,108 46
Cash on hand.....		\$334,304 98		P. & R. Co., Collateral Sinking Fund Loan.....			2,000 00
Bills Receivable.....		224,001 45		Capital Stock.....			1,774,000 00
Coal and Rent Accounts.....		2,877,273.27		Reading Company.....			8,000,000 00
Sundry Accounts.....		286,073.74		LIABILITIES.			66,164,678 90
Coal on hand.....		3,124,958 82	6,936,612 26	Coal Trust, five-year Gold Loan.....			4,050,000 00
Endowment Fund, Miners' Beneficial Asso- ciation.....		\$30,000 00		Receivers' Vouchers.....			36,752 09
Supplies and Materials on hand.....		457,630 04	477,630 04	Lehigh & Wilkes Barre Coal Co.....		\$51,308 57	57,186 68
				Current Business Debt.....		133,968 52	
				Western Freight, Tolls, &c.....		91,974 96	
				Royalties.....		301,775 41	
				Due for Coal Purchased.....		707,189 59	
				Wages and Material Bills.....		84,119 50	1,810,279 57
				Interest Due and Uncollected.....			
			\$95,435,453 79				\$95,435,453 79

READING REORGANIZATION.

Opinion of Counsel (Old Record, Government Exhibit 4, Introduced
in Evidence, Vol. II, p. 13).

7TH DECEMBER, 1896.

Messrs. J. P. MORGAN & Co.,

Reorganization Managers:

DEAR SIRS—We have carefully considered the Plan and Agreement of Reorganization of the Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, dated December 14, 1895.

This Plan contemplated the foreclosure sale of the properties of the two Reading companies and the organization of successor companies under the laws of Pennsylvania, and the vesting of the stocks and securities of these successor companies in a "New Company" formed or to be formed under the laws of Pennsylvania or of some other State. The Agreement authorized the Managers to adopt or use any existing or future companies for carrying out the provisions of the Plan.

Proceeding in execution of this Plan and Agreement, and in pursuance of the powers thereby conferred, the foreclosure sale has been had, two successor companies have been created or restored, and severally have been invested with properties of the old Reading Companies; and it is now proposed to establish the New Proprietary Company contemplated by the Plan, and to transfer to it the stocks and securities of the Philadelphia and Reading Railway Company and The Philadelphia and Reading Coal and Iron Company, together with other properties formerly of the two old companies, and then to cause

this New Company to issue new securities as contemplated by the Plan and Agreement of December 14, 1895.

Our opinion is asked as to whether you may now properly adopt the "READING COMPANY," formerly NATIONAL COMPANY, to be the New Company to carry out the Plan and Agreement, and we answer that in our opinion you can now properly adopt this Company, our opinion being founded on the following considerations:

THE FORECLOSURE AND THE PURCHASERS.

The railroads and property and corporate franchises of the Philadelphia and Reading Railroad Company, and the coal lands and the property of the Philadelphia and Reading Coal and Iron Company, included under the General Mortgage of 1888, were sold by the Trustee in that Mortgage by virtue of the powers conferred by the Mortgage and of the decree of the Circuit Court of the United States, on the 23d day of September, 1896, to Charles Henry Coster and Francis Lynde Stetson.

On the same day all the other assets and property of the Railroad Company and the Coal and Iron Company were sold under the same decree by the Receivers to the same purchasers.

These sales were duly confirmed by the Court, and conveyances and transfers of all the property were duly made and delivered, vesting in the purchasers an absolute title, free and discharged of all liens and charges, except the prior mortgages and certain charges and expenses particularly mentioned in said decree.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

The decree of confirmation and the conveyances expressly excepted and released the corporate franchises of the Philadelphia and Reading Coal and Iron Company,

so that these corporate rights and powers have been preserved to that Company; and the Purchasers have conveyed to that Company the principal part of its former property upon condition and in consideration, among other things, that the Coal and Iron Company shall become co-obligor in the bonds to be created and issued by the "New Company" under the Plan of Reorganization, and to secure such bonds, shall make and execute a mortgage on all its properties and franchises.

PHILADELPHIA AND READING RAILWAY COMPANY.

In pursuance of the Acts of Assembly of the State of Pennsylvania of May 31, 1887, Messrs. Coster and Stetson, as purchasers of the railroad property, have organized a new corporation under the name of "PHILADELPHIA AND READING RAILWAY COMPANY;" and have conveyed to the Railway Company, certain railroads and properties acquired by them at the foreclosure sale, in consideration, among other things, of the issue of the entire capital stock (\$20,000,000) and of \$20,000,000 bonds secured by mortgage, which, under careful limitations, permits the issue of other bonds to an additional amount, not exceeding \$10,000,000, for one-half the cost of property and betterments to be added to the mortgaged premises.

The Philadelphia and Reading Railway Company possesses all the rights, powers, immunities, privileges and franchises which the Philadelphia and Reading Railroad Company possessed at the time of the sale and of the conveyance, except in so far as the same are modified by the Act of 1887 (the only modification in that act being as to the time of the annual meeting), and the Constitution of the Commonwealth of Pennsylvania, which took effect January 1, 1874.

READING COMPANY.

The purchasers have acquired the capital stock of the "NATIONAL COMPANY," and have taken the proper proceedings to change its name to "READING COMPANY."

This Company was incorporated by an Act of Assembly of Pennsylvania, approved May 24, 1871, under the name of "Excelsior Enterprise Company." The capital stock was fixed at \$100,000, divided into two thousand shares of \$50 each, with "the privilege of increasing to such an amount as they from time to time deem needful." The act provided that when one thousand shares should have been subscribed and twenty per centum paid in, the shareholders could elect directors, and that the directors so elected should have and exercise all the rights and privileges conferred by the act.

The record show that the requisite number of shares was duly subscribed, and that the Company was duly organized. On May 25, 1871, the first installment of the "*bonus*" on the capital stock was paid to the Commonwealth.

On January 18, 1873, in pursuance of the powers conferred by the charter, the stockholders changed the name of the Company from "Excelsior Enterprise Company" to the "National Company," and located the general office in the City of Philadelphia, Pennsylvania. The certificate of change was filed in the office of the Secretary of the Commonwealth on March 31, 1873.

Thereafter, the "National Company" actively engaged in business, and on January 1, 1874, when the new Constitution took effect, the Company possessed an existing charter, under which a *bona fide* organization already had taken place and business had been commenced in good faith.

The second installment of the bonus on capital stock was paid to the Commonwealth on the 20th of April,

1875, and the record of such payment appears on the books of the State Treasurer and the Auditor-General.

The records of the Company show that it has kept up and maintained its organization, has made the reports required to be made to the Commonwealth, and has paid all taxes assessed by the State under the general laws taxing corporations, these payments also being shown by the records of the Auditor-General and of the State Treasurer.

On November 9, 1896, stock having been increased to \$40,000,000, the first instalment of the bonus on this increase—\$49,875—was paid to the Treasurer of the Commonwealth of Pennsylvania, and his receipt therefor, registered and countersigned by the Auditor-General, was given to the Company.

These several facts above stated, and the several public records, are within the personal knowledge of Mr. Baer.

OPINION.

This Company, now known as the "READING COMPANY," possesses identically the same powers as the Pennsylvania Company. They are broad and liberal, and, in our opinion, are amply sufficient to justify you in the adoption of the Reading Company as the "New Company" proposed in the Plan and Agreement of Reorganization, and as the agency through which legally to carry the Plan into effect.

In our opinion, the READING COMPANY can legally acquire, receive and hold, and can mortgage and pledge, all the stocks, securities and properties, including the capital stocks of the New Railway Company, and of the Coal and Iron Company; and it can keep and perform all the covenants and conditions under which severally and respectively these two companies acquire their properties from the Purchasers. By a further increase of its capital, the READING COMPANY can legally issue the Common

and Preferred Stock, and the Bonds required by the Plan of Reorganization; and, to secure the payment of these bonds, it can lawfully pledge and mortgage the stock, securities and properties by it so acquired.

GEORGE F. BAER,
J. D. CAMPBELL,
THOMAS HART, JR.,
FRANCIS LYNDE STETSON,
VICTOR MORAWETZ,
JOHN G. JOHNSON,
SAMUEL DICKSON,
JAMES BOYD,
G. L. RIVES,
F. W. WHITRIDGE,
EDWARD M. PAXSON,
EDWARD J. PHELPS.

Opinion of Attorney General of Pennsylvania (Old Record, Government Exhibit 4, printed Vol. II, pp. 316-320).

OFFICE OF ATTORNEY GENERAL,
HARRISBURG, PA., January 2, 1897.

READING COMPANY:

This corporation was created by Act of the General Assembly of Pennsylvania, approved May 24, 1871, under the name of "Excelsior Enterprise Company."

By said Act of Assembly it was vested with all the rights, powers, privileges, franchises and immunities conferred by an Act of Assembly entitled "An Act to Incorporate the Pennsylvania Company", approved the 7th of April, 1870, and the supplements to said act. It was also given power by vote of the stockholders to change the name of the Company and to designate the location of its general office, and such changes were made valid after the filing of a certificate in the office of the Secretary of the Commonwealth, signed by the President and Secretary and attested by the seal of the said Company.

On May 25, 1871, it paid to the Commonwealth the first instalment of bonus on its capital stock. On January 18, 1873, as appears by certificate filed in the office of the Secretary of the Commonwealth, March 31, 1873, the name of the Company was changed from the Excelsior Enterprise Company to the National Company, and its general office was located in Philadelphia.

This department has also been advised, by transcripts of proceedings had in one of the courts of Philadelphia, that the name of the National Company has been duly changed to the **READING COMPANY**.

Pending the foreclosure proceedings under the general mortgage made by the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company, it came to the notice of this

department that a plan of reorganization was contemplated, by which it was proposed that the stock of the two companies above mentioned should be held, owned and controlled by the corporation originally known as the Excelsior Enterprise Company, since changed to READING COMPANY, as above mentioned.

The obvious purpose of this part of the scheme of reorganization seemed to be to escape from that provision of the Constitution of 1874 which forbids any incorporated company doing the business of a common carrier to directly or indirectly engage in mining or manufacturing articles for transportation over its lines; or, stated differently, the union of the coal company with the railroad company.

The charter under consideration grants powers of the most comprehensive character, and, if valid, enables the company to control and to engage in almost any business except that of a bank issue.

Upon examination of the records in the Auditor General's office it was learned that this corporation, although created in 1871, and constantly keeping up its organization, had practically done little or no business since the year 1875; and it was further learned that on or about November 9, 1896, the Company had increased its capital from \$100,000 to \$40,000,000, and had paid to the Commonwealth the first installment of bonus upon such increase, amounting to nearly \$50,000. It was announced also that a further increase of capital was contemplated to the amount of \$140,000,000.

The Attorney General then lodged with the State Treasurer and Auditor General a cautionary letter against receiving any further payments of bonus pending an investigation as to the power of the corporation to do the things proposed by it to be done.

By vote of the Company, the capital was increased further, as I am informed, from \$40,000,000 to \$140,000,000 and it was then learned by the Company that the

further payment of bonus would not be received by the State Treasurer until it could be demonstrated that the Company still possessed the powers claimed for it.

It was believed by the Attorney General that this Company fell within the provisions of Section 1, Article XVI., of the Constitution, which reads as follows:

"All existing charters, or grants of special or exclusive privileges, under which a *bona-fide* organization shall not have taken place and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity."

The counsel for the Reading Company voluntarily appeared before me on December 16, 1896, and produced certain evidence tending to show that a *bona fide* organization had taken place and business had been commenced in good faith some time prior to the adoption of the Constitution, which became operative January 1, 1874.

It appears from the minute book of the Company that the incorporators met pursuant to notice August 5, 1871, and organized. By resolution it was provided that a book to receive subscriptions to the capital stock be opened, and on that day a Treasurer was appointed for the incorporators with power to prepare and open such subscription book.

The next meeting of the stockholders appears to have taken place January 4, 1873, and subscriptions were made to the amount of \$50,000. On the same day there was a meeting of the Board of Directors, elected by the stockholders, and an election of President and Treasurer.

Another meeting of the Board of Directors was held January 8, 1873, at which the Treasurer of the Company reported that he had received \$10,000, being the amount paid on the stock subscribed, as above stated. On the same day the President, Secretary and Treasurer were by resolution requested to give the notice required by

the Act of April 21, 1858, to the Auditor General of the organization of the Company.

January 10, 1873, the Board of Directors again met, adopted by-laws, and authorized the purchase of a certain claim against the National Railway Company.

On January 11, 1873, a special meeting of the stockholders was held, at which a resolution was offered that the stockholders of the Excelsior Enterprise Company consent and agree that the capital stock of said Company shall be increased to 200,000 shares, and by vote increased the same to that amount, of which 100,000 shares were to be classed as common stock and 100,000 shares as preferred stock.

On January 13, 1873, the Directors met and authorized the purchase of 75,000 shares of the common stock of the National Railway Company in consideration of 100,000 shares of the common stock of the Excelsior Enterprise Company.

January 14, 1873, the Directors again met and transacted business, and again on January 18, 1873, at which meeting, on motion, the agreement submitted by counsel with the National and Stanhope Companies was accepted and the officers directed to sign and seal the same under directions of the Company.

On May 23, 1873, the Directors met and passed a resolution that the draft of the contract with the Philadelphia and Yardleyville Company for the construction of the Philadelphia and Yardleyville Railroad be approved and confirmed, and authorized the President and Secretary to execute the same on behalf of the Company. At the same meeting the draft of the contract with the National Railway Company of New Jersey was approved and the President and Secretary authorized to execute the same.

The Company also resolved at the same meeting to indorse and guarantee the bonds of the Philadelphia and Yardleyville Railroad Company to the amount of

\$1,500,000, and the bonds of the National Railway Company of New Jersey to the amount of \$3,500,000, and by said resolution did indorse and guarantee the same and directed the President and Secretary of the Company to execute said indorsement and guaranty upon said bonds.

The Directors again met on May 31, 1873, at which meeting was submitted a form of contract between the Victoria Construction Company and the National Company for building and equipping the railroads of the Philadelphia and Yardleyville Railroad Company and the National Railway Company of New Jersey.

On July 2, 1873, the Directors again met and authorized the Treasurer to receive from the Philadelphia and Yardleyville Railroad Company its bonds as the same shall become due to the Company in compliance with the contract.

On December 4, 1873, at a meeting of the Board of Directors, the National Company, formerly the Excelsior Enterprise Company, adopted and agreed to a contract with the Hamilton Land Association.

December 26, 1873, at a Directors' meeting, a communication was received, inclosing a proposal for the rebuilding of the National Railway from Bound Brook to the Delaware River, and referred to the Executive Committee. At the meeting the Secretary reported that the lease on building No. 218 South Fourth Street, Philadelphia, occupied by the Company, would expire on the 1st of January then next. On motion the Secretary was authorized to rent an office in Philadelphia. At the same meeting the Executive Committee was authorized to perfect details whereby the floating debt of the National Railway Company might be settled by preparing loan notes, if deemed advisable, due and payable on the 1st of January, 1875.

Other meetings were held February 4, 18 and 19, 1874, at which certain business was transacted. The Directors again met March 8, 1875.

On June 1, 1875, there was an annual meeting of the stockholders, at which Directors were elected, and the annual meetings have been kept up ever since, except in 1881 and 1882.

The only question for consideration is whether or not there was such a *bona fide* organization and commencement of business by the Excelsior Enterprise Company, now called the READING COMPANY, prior to January 1, 1874, as will prevent it from falling within the constitutional provision above cited.

That the Company was not successful in business seems clear enough, and I have little doubt but that it was used as a tributary to a more important corporation and for the purposes of the latter. But the Company was organized, did do business and incurred large obligations (many of them may be still outstanding) prior to January 1, 1874.

POWERS GRANTED BY STATE.

The powers written into the charter of the corporation, while, in my opinion, inimical to the best interests of the Commonwealth, are, nevertheless, powers granted by the State, accepted by the corporators, and acted upon by them, and those dealing with the Company. Nor do I think the non-use of the corporate franchises after 1875 for a long period is ground of forfeiture. The organization, as we have noticed, has been constantly kept up. The corporation is a private one, and the public had no interest in the use of the powers granted. The franchise to be a corporation was expressly retained by the annual elections of officers and appraisers never to have been abandoned.

After due consideration, I reach the conclusion, most reluctantly, that the Commonwealth of Pennsylvania cannot now successfully attack the chartered rights of the READING COMPANY; at least, the rights of such a nature

and character as had been exercised by the corporation prior to January 1, 1874. It had power to do the business in which it was engaged prior to the adoption of the new Constitution.

Whether the other grants of special privileges, of the varied kinds set forth in the charter, continued after January 1, 1874, is a question that may be determined hereafter, when the occasion arises. In construing a charter similar in character to that of the READING COMPANY in *Carothers' Appeal*, 118 Pa. St., 489, Mr. Justice WILLIAMS, speaking for the Court, used the following language:

"The question which we have is not whether a single corporation organized under an 'omnibus charter' may be permitted to gather up into one corporate hand all the powers and franchises of the Commonwealth, but whether this company may do this particular business in which it had embarked its capital. We hold that it may; that the powers granted by the act of incorporation authorized it to engage in this business."

My view of the whole matter is that the charter of the Company authorized it to do the kind of business in which it engaged prior to January 1, 1874, which business was of the same general character as that in which it proposes to engage for the purpose of controlling the stocks of the Railway Company and the Coal and Iron Company.

The wisdom of the framers of the Constitution of 1874, in denying to the Legislature the power to grant special charters, becomes painfully apparent in the consideration of the manifold powers granted by the charter of the Reading Company, and the only consolation of the present generation is that they are not responsible for it.

H. C. McCORMICK,
Attorney-General.

CONSOLIDATED STATEMENT
READING RAILROAD
COAL & IRON
MINING AND
INDUSTRIALIZATION.

For the year ended
" " " "
" " " "
" " " "
" " seven months
Railway Coal
Coal & Iron Co

Less
Reading Co
Net Deficit
Total

STATEMENT OF
READING
COMPANY.
PHILADELPHIA

For the year ended		Surplus— per books.
June 30, 1898.....	\$ 133,293.12	.....
1899.....	650,719.63	.....
1900.....	1,227,935.95	\$ 745,309.20
1901.....	1,467,901.31	1,568,174.88
1902.....	1,239,911.71	2,794,587.05
1903.....	2,263,159.56	5,112,102.58
1904.....	4,125,299.80	7,028,368.06
1905.....	6,307,156.73	10,387,530.28
1906.....	8,794,398.45	9,772,001.89
1907.....	11,518,551.38	9,816,427.01
1908.....	14,269,445.94	10,162,066.44
1909.....	17,612,171.89	9,721,612.27
1910.....	20,094,021.20	11,372,906.09
1911.....	21,342,984.17	9,655,986.51
1912.....	22,608,626.72	8,765,980.04
1913.....	24,836,461.80	11,560,085.52
1914.....	27,259,203.69	8,426,178.10
1915.....	27,402,926.13	8,442,843.44
1916.....	28,459,405.70	14,867,839.46
Dec. 31, 1917 ¹	30,749,065.55	15,690,002.56
1918.....	32,559,035.00	10,780,898.74
1919.....	33,201,149.81	10,410,338.83
1920.....	33,996,983.01	10,113,114.23

¹ Fiscal year, which prior to this date ran from July 1 to June 30 annually—changed to period from January 1 to December 31 annually. Its first period covers eighteen months.

CONSOLIDATED STATEMENT OF THE EARNINGS FOR PHILADELPHIA & READING RAILROAD COMPANY AND THE PHILADELPHIA & READING COAL & IRON COMPANY FOR THE PERIOD PRIOR TO THE REORGANIZATION.

	Deficit—Excess of Expenses and Fixed Charges Over Earnings.
For the year ended November 30, 1893.....	\$ 802,343.00
“ “ “ “ November 30, 1894.....	1,933,007.00
“ “ “ “ November 30, 1895.....	1,538,805.00
“ “ “ “ November 30, 1896.....	1,365,846.00
“ “ seven months ended June 30, 1897	
Railway Company deficit.....	\$ 533,554.48
Coal & Iron Company “	1,141,700.10
	<u>\$1,675,254.58</u>
Less	
Reading Company Profit....	432,127.64
Net Deficit.....	<u>1,243,126.94</u>
Total Accumulated Deficit.....	\$6,883,127.94

STATEMENT OF SURPLUSES FOR THE YEARS 1898 TO 1920, INCLUSIVE.

READING COMPANY.	PHILADELPHIA & READING RAILWAY COMPANY.			THE PHILADELPHIA & READING COAL & IRON COMPANY.	AGGREGATE FOR 3 COMPANIES.	DIVIDENDS PAID BY READING COMPANY.
	Surplus— per books.	*Addition to property through income and surplus.	Total.			
\$ 133,293.12	.....	.....	.....	.....	\$ 133,293.12	.....
650,719.63	.....	.....	.....	\$ 423,038.30	1,073,757.93	.....
1,227,935.95	\$ 745,309.20	.....	\$ 745,309.20	280,253.15	2,253,498.30	\$ 374,735.25
1,467,901.31	1,568,174.88	.....	1,568,174.88	835,647.78	3,871,723.97	934,735.25
1,239,911.71	2,794,587.05	.....	2,794,587.05	652,116.12	4,686,614.88	1,120,000.
2,263,159.56	5,112,102.58	.....	5,112,102.58	1,422,361.02	8,797,623.16	840,000.
4,125,299.80	7,028,368.06	.....	7,028,368.06	1,222,788.09	12,376,455.95	2,590,000.
6,307,156.73	10,387,530.28	.....	10,387,530.28	1,390,666.16	18,085,353.17	3,850,000.
8,794,398.45	9,772,001.89	.....	9,772,001.89	1,259,920.54	19,826,320.88	5,600,000.
11,518,551.38	9,816,427.01	.....	9,816,427.01	1,188,438.52	22,523,416.91	5,600,000.
14,269,445.94	10,162,066.44	\$ 937,659.64	11,099,726.08	1,395,962.29	26,765,134.31	5,600,000.
17,612,171.89	9,721,612.27	2,743,381.82	12,464,994.09	1,462,936.00	31,540,101.98	5,600,000.
20,094,021.20	11,372,906.09	4,814,042.76	16,186,948.85	1,391,435.05	37,672,405.10	6,300,000.
21,342,984.17	9,655,986.51	8,167,601.58	17,823,588.09	1,288,118.49	40,454,690.75	7,000,000.
22,608,626.72	8,765,980.04	10,797,341.11	19,563,321.15	1,459,694.14	43,631,642.01	7,000,000.
24,836,461.80	11,560,085.52	13,188,903.47	24,748,988.99	2,509,286.55	52,184,737.34	7,700,000.
27,259,203.69	8,426,178.10	15,213,686.83	23,639,864.93	3,314,676.47	54,213,745.09	8,400,000.
27,402,926.13	8,442,843.44	16,375,378.15	24,818,221.59	3,375,248.45	55,596,396.17	8,400,000.
28,459,405.70	14,867,839.46	17,371,038.32	32,238,877.78	4,655,296.56	65,353,580.04	8,400,000.
30,749,065.55	15,690,002.56	21,968,947.76	37,658,950.32	11,986,307.04	80,394,322.91	12,600,000.
32,559,035.00	10,780,898.74	28,861,046.35	39,641,945.09	16,146,469.24	88,347,449.33	8,400,000.
33,201,149.81	10,410,338.83	33,383,185.76	43,793,524.59	19,013,206.00	96,007,880.40	8,400,000.
33,996,983.01	10,113,114.23	593,537.86	63,706,652.09	25,685,428.48	123,389,063.58	8,400,000.

ate ran from July 1 to June 30
ary 1 to December 31 annually.
s.

*Prior to June 30, 1907, the Railroad Company had charged additions to income; but thereafter the Interstate Commerce Commission required Additions and Betterments paid out of income to be capitalized.

Extracts from Annual Reports of the Philadelphia & Reading Railroad Company (Old Record, Vol. II, pp. 130-132).

From the annual report for 1887, pages 23 to 25, as follows:

At the annual meeting of the stockholders of the Philadelphia and Reading Railroad Company, held January 9, 1888, the following resolutions were unanimously adopted by a vote of 794,895 shares:

RESOLVED, That the report of the president and board of managers for the year ending November 30, 1887, just read, be accepted and adopted, and, together with the accompanying exhibits and documents of the receivers, be printed in pamphlet form for distribution among the shareholders.

RESOLVED, That an issue of general mortgage bonds of the Philadelphia and Reading Railroad Company is hereby authorized to the amount of one hundred million of dollars, bearing interest at a rate not exceeding four per cent per annum, and that a mortgage dated January 3, 1888, in such form as may be approved by the board of managers, be executed securing the same, upon the railroads, leased lines, rolling stock, ships, boats, real estate, and franchises of the company, now or hereafter acquired, and the coal lands and other real estate, plant and leasehold estates, now or hereafter acquired, of the Philadelphia and Reading Coal and Iron Company.

RESOLVED, That an issue of first preference income mortgage bonds of the Philadelphia and Reading Railroad Company is hereby authorized to an amount not exceeding \$25,000,000 payable January 1, 1958, bearing non-cumulative interest from June 1, 1887, at five per cent per annum, payable only out of earnings available for the purpose, after providing for interest on the general mortgage bonds and all other fixed charges, and that a mortgage dated January 3d, 1888, in such form as may be

approved by the board of managers, be executed securing the same, upon the railroads, leased lines, rolling stock, ships, boats, real estate, and franchises of the company, now or hereafter acquired, and the coal lands and other real estate, plant, and leasehold estates, now or hereafter acquired, of the Philadelphia and Reading Coal and Iron Company, said mortgage to be subordinate in lien to the mortgage given to secure the general mortgage bonds.

RESOLVED, That an issue of second-preference income mortgage bonds of the Philadelphia and Reading Railroad Company is hereby authorized to an amount not exceeding \$26,140,518, payable January 1, 1958, bearing non-cumulative interest from June 1, 1887, at five per cent per annum, payable only out of earnings available for the purpose, after providing for interest on the general mortgage bonds, and all other fixed charges and interest on the first-preference income mortgage bonds, and that a mortgage dated January 3, 1888, in such form as may be approved by the board of managers, be executed securing the same, upon the railroads, leased lines, rolling stock, ships, boats, real estate, and franchises of the company, now or hereafter acquired and the coal lands and other real estate, plant, and leasehold estates, now or hereafter acquired, of the Philadelphia and Reading Coal and Iron Company, said mortgage to be subordinate in lien to the mortgages given to secure the general mortgage bonds and the first-preference income mortgage bonds.

RESOLVED, That an issue of third-preference income mortgage bonds of the Philadelphia and Reading Railroad Company is hereby authorized to such an amount as the board of managers may from time to time determine, payable January 1, 1958, bearing noncumulative interest from June 1, 1887, at five per cent per annum, payable only out of earnings available for the purpose, after providing for interest on the general mortgage bonds and all other fixed charges, and interest on the

first-preference income mortgage bonds, and on the second-preference income mortgage bonds, and that a mortgage dated January 3, 1888, in such form as may be approved by the board of managers, be executed securing the same, upon the railroads, leased lines, rolling stock, ships, boats, real estate, and franchises of the company, now or hereafter acquired, and the coal lands and other real estate, plant, and leasehold estates, now or hereafter acquired, of the Philadelphia and Reading Coal and Iron Company, said mortgage to be subordinate in lien to the mortgages given to secure the general mortgage bonds, and the first and second preference income mortgage bonds.

From the annual report for 1891, page 15, as follows (Old Record, Vol. II, p. 132) :

It may be of interest to those who are not familiar with previous reports to add that the immense estates of the company aggregate upwards of 194,000 acres, which may be classified as follows:

Coal lands owned (acres).....	95,144	
Coal lands leased from others (acres)	7,429	
		<hr/> 102,573
Timber lands owned (acres).....	70,489	
Iron-ore lands (acres).....	21,000	
		<hr/> 194,062
Total area (acres).....		194,062

The coal lands comprise in extent about 33 per cent. of the entire anthracite coal fields of the State, and taking into account the aggregate thickness of the veins on the company's lands, and the greater proportionate depletion of the estates in the other regions which has been going on for many years, it must be conceded that we have at least 50 per cent. of the entire deposit remaining unmined.

From the annual report for 1893, page 11, as follows (Old Record, Vol. II, p. 136) :

It should, perhaps, be stated here that although the operations and the organization of the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company are and have always been entirely distinct, their joint interest will in this report be treated of together, as they are so intertwined—the coal and iron company mining and marketing the coal which the railroad company transports—that it will conduce to convenience and clearness of statement to so consider them.

From the annual report for 1893, pages 77 and 78, as follows (Old Record, Vol. II, pp. 137, 138) :

For the last quarter of a century the maintenance of the integrity of the Reading System as a whole, and the preservation of the franchises of both the railroad and coal and iron companies so as to develop and operate the properties of both companies to advantage, have been regarded as of cardinal importance to all interested, either as creditors or as stockholders. No inventory and appraisalment of separate items are of any importance, except so far as a statement of these assets may give an assurance of the permanence and growth of the income, unless it is proposed to sell the property in parcels, and such a method of realizing its value has never been seriously proposed. In fact, by the ninth article of the general mortgage of January 3d, 1888, it is provided “the railroad company and coal company for themselves and for all persons and corporations lawfully claiming through or under them, respectively, or who may at any time become holders of liens junior to the lien of this mortgage, hereby expressly waive and release all right to have the mortgaged property marshaled upon any sale

thereof under the provisions of this mortgage; and the trustee hereunder and any court in which foreclosure of this mortgage is sought shall sell the entire mortgaged and pledged property of every description in each case as a whole, subject to the right of a majority in interest of the holders of the bonds hereby secured then outstanding, by requisition in writing, to direct the trustee to sell said properties in such parcels as they may deem best."

This provision is the best evidence of the opinion entertained by all concerned in the reorganization of 1888 as to the proper manner in which to deal with the property in case it should prove necessary to sell under foreclosure, and the concessions at that time to the holders of the securities of the Susquehanna and Schuylkill Canal Companies and other unproductive properties were only made because of the value attached to the preservation of the franchises and of the unity of the system.

It is thus manifest that any plan for the reorganization of the affairs of the Reading Companies must be based upon the maintenance of the property as an entirety and as a going concern; and this being so, it is essential that provision should be made for—1st, the payment of the interest upon the general mortgage bonds; 2d, the payment of the liabilities incurred in the purchase of equipment; and 3d, the funding of the floating indebtedness, including the receivers' certificates.

From the annual report for 1894, page 9, as follows (Old Record, Vol. II, p. 138) :

The management have always felt that of all branches of the business of the Reading Companies the most important and the most promising is the production and

sale of anthracite. In all other departments the Reading Companies compete with rivals who are placed and equipped for business as well as or better than themselves, but in the coal business they have a vast undeveloped estate, which needs only time, patience, and resolution to develop profitably. To this development, both in producing and marketing the coal, they have devoted their best energies.

From the annual report for 1895, page 7, as follows (Old Record, Vol. II, p. 139) :

As the Coal and Iron Company did not earn its operating expenses, it became necessary for the railroad company to advance to it the money required to pay so much of its interest as is guaranteed by the railroad company, which is \$656,270.

From the annual report for 1895, page 11, as follows (Old Record, Vol. II, p. 139) :

While the business was a losing one for the coal and iron company, this loss was more than made up by the gain to the railroad company from the additional tonnage produced, which was carried at freight rates which yielded a profit.

From printed report of the committee appointed by the stockholders to investigate the Philadelphia and Reading Railroad Company, January 12, 1885, pages 37 to 43, as follows (Old Record, Vol. II, pp. 127-130) :

HISTORY AND POLICY OF ACQUISITION OF COAL LANDS.

Up to the year 1870 your company had confined its business exclusively to the transportation of passengers, coal, and other merchandise. In that year, however, there

took place serious labor strikes in the coal territory, to prevent a recurrence of which evil your managers conceived the idea of becoming, through the ownership of an auxiliary company, "the owners of coal lands situate upon the line of its several branches" (see report, January 8, 1872, page 16), believing that a closer relationship to the labor than through the miner and shipper would enable your company to control the question and prevent these periodical strikes. The result of this action was (see page 17), "to secure, and attach to the company's railroad, a body of coal land capable of supplying all the coal tonnage that can possibly be transported over the road for centuries," and your managers added: "This result has been obtained without imposing any serious burden upon the company, for the lands purchased are already so far developed that it is estimated they will produce in rents, during the year 1872, \$1,200,000; and it is believed that in less than three years the net annual revenue arising from the lands will be greater than the interest payable upon the loan issued to secure them;" but unfortunately the vicissitudes of this commercial undertaking have, as we shall see, prevented the fulfilment of the prophecy; for in the very next year your managers (report of January 13, 1873, page 18) admit that although the coal tonnage was greater than in any previous year, yet the gross receipts had fallen off, owing to a decline in the price of coal and rates of transportation which the company, notwithstanding its acquisition of the coal fields, was "unable to control." During this year, 1872, your managers purchased 10,000 additional acres, making 80,000 acres in the aggregate controlled, "upon which there were ninety-eight collieries"; and they stated, among other things (see page 31): "Should the anticipations formed of the coal trade for the coming season prove correct, the managers believe that the Coal and Iron Company will, during this year, which is but the second of its existence,

be in the receipt of an income sufficient to pay the interest upon the entire cost of its property."

About this time a policy inaugurated originally to prevent strikes and furnish traffic grew into one to prevent competition and secure control, and in 1874, 20,000 additional acres were acquired (see report of January 11, 1875, page 26), upon the consummation of which negotiation your managers announced that it "was not at present designed to purchase any more." (By way of parenthesis it may be here mentioned that the aggregate number of acres was thus augmented to 100,000, and that since that declaration it has reached 163,290 acres.)

Having now secured the territory, the coal and iron company embarked regularly and systematically into the business of mining, preparing, and shipping coal (see same page), and your managers gave as their reasons therefor, as follows: "An experience of one or two years as landlords showed how utterly inadequate, under existing circumstances, the individual tenants were to develop and improve the estate;" first, because they had not sufficient capital to mine properly; and, second, because the depression resulting from the strikes had given little encouragement to individuals to engage in mining. Therefore, your managers resolved (page 27) to become miners of the coal themselves; and for this purpose, in addition to "expenditures for purchasing, opening, and improving collieries," they go on to say, "a large investment was made, outside of the coal regions, to enable them to handle and successfully dispose of the product of the mines. Large retail yards in the city of Philadelphia, wharves, and shipping facilities in New York and the various eastern ports have been purchased and erected; and it is believed that no other company now possesses greater advantages than those of the Philadelphia and Reading Coal and Iron Company, in the ability to mine coal economically, and to dispose of a large product to

the best advantage; the only improvement yet wanted to complete the system being a depot capable of storing at one place at least 500,000 tons of coal, in order to keep the collieries constantly at work and avoid the expense of stopping them whenever orders are scarce, or vessels not in sufficient supply to carry away the products."

At page 29 of the same report (for 1874) is found this statement:

"When it is considered that the anthracite coal trade of the United States has now reached an annual product of 19,000,000 of tons, that is, has doubled every ten years during the past; that in ten years it will be 40,000,000 of tons; and that the Philadelphia and Reading Coal and Iron Company owns at least one-third of all the anthracite coal land of Pennsylvania, but little doubt can reasonably be entertained of the future success of the company." Upon such theories and hopes was the financial administration of your property based.

Instead, however, of reaching 40,000,000 of tons in ten years, the production, owing in a great measure to the depression of all classes of industry, aggregated only 30,000,000, and instead of the coal and iron company producing 13,333,333 tons, which would be one-third of 40,000,000, it produced in the year terminating the decade (1884) only 5,672,685 tons.

This is an illustration of the danger of basing financial schemes on "the substance of things hoped for, the evidence of things not seen."

In the report of January 10, 1876, page 16, your managers tell you "the principal feature in the business of the past season, and the cause of the largely decreased traffic, has been a prolonged strike in the anthracite coal region, which for six months deprived the company of nearly its entire coal tonnage and very materially reduced its receipts from other traffic which is always dependent upon the coal trade."

Thus the primary object for which these lands were acquired, to wit, to guard against strikes, resulted in an universal stoppage of work over the entire region, whereas in previous years these combinations had been confined to localities. This strike which for six months defied the power of the company and snapped its fingers at its ownership and control of the coal lands, cost your company upwards of four and a half millions of dollars, and was terminated only by the zeal and intelligence brought to bear upon it by your then president, and the courage of his trusty subordinates. It was the power of these determined men, and not the potency of the wealth and magnitude of your estate, which restored tranquility and trade and punished the transgressors.

In the report made January 8, 1877, page 18, your managers stated that "the net profits of your company" were \$1,355,708.58 short of paying the fixed charges; and that this result was "not alone due to the great depression in business and the depreciation of values, but that it was caused, to a very great extent, by the unfair workings of the association of coal producing and transporting companies by which the company, in the months of June, July, and August was practically deprived of its proper share of coal tonnage, and was, for the time being, unable to protect itself."

Thus we gather from the history of your company, written by its own managers, that in the brief period of half a decade, it was demonstrated that in associating with transportation the precarious business of producing and manufacturing, the very objects which this policy was inaugurated to attain were defeated, viz:

- 1st. To prevent strikes.
- 2d. To provide its proper share of tonnage, and
- 3d. To control the price of the commodity.

What would have been the result of confining your business to the functions for which you were originally

created is idle to speculate about at this late date. Perhaps it would have been better.

To retrace your steps is impracticable, if it were policy to do so; you are too heavily handicapped by the obligations incurred during the past fifteen years; and until you are relieved from their weight you will be in no condition to engage in competition with your less burthened rivals.

Your committee feel that they should emphatically enter a protest against any further purchase of coal lands, and they are constrained to do this because they find that during 1883 and as recently as 1884 (under contracts made in 1883), notwithstanding the embarrassed condition of your property, you purchased the following:

* * * * *

We are confirmed in our view upon this subject by the following extract from the testimony taken before your committee of the officer of the company most familiar with the subject:

“Q. Are you of opinion that the Reading Railroad has acquired all the coal land which menaced or threatened its business of transportation, if in rival hands?

“A. Yes; all that was available; I don't know where another road could get any coal at all in the southern coal field.”

There may be and probably is good reason why a system of railroad traversing a territory abounding in a production indigenous thereto should secure beyond all hazard its carrying share thereof.

To so secure your traffic that you are at all times powerful enough to engage in honest competition is a duty; but to step beyond this is not only an expensive experiment which seldom succeeds, but oftener leads to embarrassment and disaster; especially in a country pregnant with new developments and fertile in ingenuity to thwart all combinations against competition.

*List of fifty largest stockholders at close of business
March 16, 1914 (Old Record, Vol. II, p. 431).*

	1st pref. shares.	2nd pref. shares.	Common shares.	Total shares.
Lake Shore & Mich. Sthn. Ry. Co., Grand Cen. Ter., New York City.....	121,300	285,300	200,050	606,650
Balto. & Ohio R. R. Co., Baltimore, Md.....	121,300	285,300	200,000	606,600
P. A. B. Widener, Land Title Bldg., Philadelphia.....			100,000	100,000
Whitehouse & Co., 111 Broadway, N. Y. C.....	9,295	23,436	11,756	44,487
Pyne, Kendall & Hollister, 55 Wall St., N. Y.....			31,580	31,580
Huhn, Edy & Co., 111 Broadway, N. Y.....	400		29,800	29,700
George F. Baker, 2 Wall St., New York.....			17,500	17,500
A. Iselin & Co., 36 Wall St., New York.....	14,377	1,300	1,350	16,787
Oliver H. Payne, 51 Wall St., New York.....			15,000	15,000
Est. of Thos. McKean, Drexel Bldg., Phila.....	11,450		3,400	14,850
Henry Graves, jr., 80 Broad St., New York.....	9,000	4,000		13,000
Pomeroy Bros., 30 Pine St., New York.....		12,000	700	12,700
John B. Manning, 2 Wall St., New York.....	1,170	2,557	8,907	12,634
J. W. Davis & Co., 100 Broadway, N. Y.....	264	100	11,790	12,054
Hancke Hencken, 8 W. 121st, N. Y.....		9,300	2,400	11,600
George F. Baer, Reading Terminal, Phila.....	7,658	587	3,622	11,554
Homans & Co., 2 Wall St., New York.....			11,400	11,400
Moore & Schley, 80 Broadway, N. Y.....			10,880	10,880
Pearl & Co., 71 Broadway, New York.....			10,710	10,710
Lehman Bros., 16 William St., N. Y.....	1,720	2,768	5,180	9,618
Charles D. Barney & Co., 25 Broad St., New York.....			9,375	9,375
Vivian Gray & Co., London, E. C., Eng.....			9,060	9,060
George A. Huhn & Sons, Land Title Bldg., Phila.....			8,700	8,700
S. Japhet & Co., London, E. C., Eng.....			8,110	8,110
Halle & Stieglitz, 30 Broad St., N. Y.....			7,975	7,975
J. S. Bache & Co., 49 Broadway, N. Y.....		4	7,610	7,614
Arthur Lipper & Co., 20 New St., New York.....		800	7,029	7,229
Dexter P. Rumsey, Buffalo, N. Y.....			7,200	7,200
Cornelius A. Lane, 1211 Clover St., Phila.....	400	1,700	5,000	7,100
Strong, Sturgis & Co., 30 Broad St., New York.....			7,066	7,066
Henry Graves, 30 Broad St., New York.....	1,000	6,000		7,000
Emily A. Watson, 512 5th Av., N. Y.....	7,000			7,000
Stephen Sanford, Amsterdam, N. Y.....				6,954
Henry Clews & Co., 25 Broad St., New York.....				6,515
Keech, Loew & Co., 7 Wall St., N. Y.....	68	300	6,250	6,270
Geo. D. Widener, est., Land Title Bldg., Phila.....		20	6,111	6,111
James G. Kitchen, 8 Letitia St., Phila.....			6,000	6,000
Geo. Eastman, Rochester, N. Y.....	900	2,700	2,500	6,100
Park M. Woolley, 77 Spring St., N. Y.....			6,000	6,000
Joseph A. Woolley, 77 Spring St., N. Y.....			6,000	6,000
Edward H. Graves, 30 Broad St., New York.....			6,000	6,000
M. C. Bouvier & Co., 30 Broad St., New York.....	2,800	2,620		5,420
J. J. Danzig & Co., 100 Broadway, N. Y.....		100	5,275	5,375
Shearson, Hamill & Co., 71 Broadway, N. Y.....			5,300	5,300
S. B. Chapin & Co., 111 Broadway, N. Y.....		300	4,950	5,250
Nathan Snellenburg, 18th & Market Sts., Philadelphia.....	20		5,196	5,216
Wm. M. Potts, Wyebrook, Pa.....		200	5,000	5,200
Frank W. McElroy, Frick Bldg., Pittsburgh, Pa.....	1,000	2,100	2,000	5,100
Florence A. V. Twombly, 684 5th Ave., N. Y.....	5,000		5,000	5,000
Jos. E. Widener, Land Title Bldg., Phila.....			5,000	5,000

Dated November 2, 1921.

ABRAM F. MYERS, for the
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Plan as Modified.

(Filed May 12, 1921.)

In pursuance of the decree of mandate of this Court entered October 8th, 1920, defendants, Reading Company, Philadelphia and Reading Railway Company, and The Philadelphia & Reading Coal & Iron Company, respectfully submit the following plan:—

1. The Reading Company will assume the \$96,524,000 General Mortgage 4% bonds, which are a joint obligation of the Reading Company and The Philadelphia & Reading Coal & Iron Company (hereinafter called the Coal Company), and will agree to save the Coal Company and its property harmless therefrom.

2. The Coal Company will pay to the Reading Company \$10,000,000 in cash, or current assets at market value, and \$25,000,000 in 4% mortgage bonds of the Coal Company. The mortgage under which they are to be issued may contain provision for the issue thereunder of additional bonds to provide for additions, betterments and improvements to a limited amount, to be determined by the Reading Company and the Coal Company prior to the creation of the mortgage, and shall contain provision for a proper sinking fund for the retirement of bonds issued thereunder. The \$25,000,000 bonds issued by the Coal Company to the Reading Company shall mature on January 1, 1997, the same date as the General Mortgage bonds. The bonds issued by the Coal Company shall be subject to redemption at par and accrued interest on any semi-annual interest date as a whole but not in part, except out of the moneys in the sinking fund.

3. Except as otherwise herein expressly provided, general releases of all claims and liabilities as between the Reading Company and the Coal Company, including the claim of approximately \$70,000,000 carried on the books of the Reading Company as an asset and on the books of the Coal Company as a liability, will be exchanged.

4. *The Reading Company will agree with the Coal Company that, at or before the maturity of the General Mortgage bonds, it will obtain the release of the Coal Company's property from the lien of the General Mortgage and the discharge of the Coal Company from liability on the General Mortgage bonds.*

5. *If the Court so orders, the Reading Company will, subject to the lien of the General Mortgage, sell, assign and transfer all its right, title and interest in and to the stock of the Coal Company, including the present right to vote and receive dividends thereon, to a new corporation to be formed with appropriate powers, and will agree to save the new corporation and said stock harmless from the lien of the General Mortgage, and will agree to obtain, at or before the maturity of the General Mortgage, the release of the stock of the Coal Company from the lien of the General Mortgage and the assignment, transfer and delivery of said stock to the new corporation—all in consideration of the payment by the new corporation to the Reading Company of the sum of \$5,600,000, and its agreement to issue its shares to the stockholders of the Reading Company as hereinafter provided. The new corporation will issue 1,400,000 shares of stock without par value. Such no par value stock will be sold by the new corporation to the stockholders of the Reading Company, preferred and common, share and share alike, for \$5,600,000, or \$2.00 for each share of Reading stock. Provision will be made for the disposition by the Reading Company of any rights to subscribe which may not be availed of by the Reading stockholders within such period as may be fixed by the Reading Company, with the approval of the Court, to the end that the new corporation shall receive the full purchase price of \$5,600,000. It is proposed to carry out this sale in accordance with the precedent established by the Union Pacific-Southern Pacific case, by issuing to Reading stockholders, with or without the in-*

tervention of a trustee, as may be provided for in the final decree of the Court, assignable certificates of interest in the stock of the new corporation exchangeable for such stock only when accompanied by an affidavit that the holder is not the owner of any stock of the Reading Company.

In addition there will be embodied in the final decree a permanent injunction against the new corporation exercising its voting power on the stock of the Coal Company in such a way as to bring about any new relations between the Coal Company and the Reading Company of the character complained of in the present suit. Any further steps, which may be deemed necessary by the Court, will be taken to the end that an independent board and management to be approved by it will be maintained for the Coal Company, so that the independence of this company need not await the necessarily gradual process of the distribution of the no par value stock of the new corporation among persons not holders of stock in the Reading Company.

The final decree may provide that if by reason of default on the General Mortgage bonds the Trustee, the Central Union Trust Company, shall exercise the right to vote the stock of Reading Coal Company, it shall so exercise that right as not to bring about unity of management between said Coal Company and Reading Company, and the final decree may further provide that, in the event the Trustee at any time is obliged to sell the stock or properties of Reading Coal Company, it shall dispose of such stock and properties separately from the properties of Reading Company and to different interests.

6. The Reading Company will merge the Philadelphia & Reading Railway Company under the authority contained in the present charter of the Reading Company, and will subject the Railway property to the direct lien of the General Mortgage. The name of the Reading Company, after merger, will not be changed. The Reading

Company will accept the Pennsylvania Constitution of 1874, and it will proceed under the Act of 1856 to surrender those of its powers which are inappropriate for a railroad corporation of Pennsylvania. Thus the Reading Company will be in all respects subject to the regulation of State and Federal authorities as a common carrier, and the relation of the Reading Company, as a specially chartered holding company, to the Philadelphia and Reading Railway Company will be terminated.

7. The Court will be asked to defer the actual sale of the stock held by the Reading Company in the Central Railroad of New Jersey pending the grouping of railroads by the Interstate Commerce Commission under the Transportation Act, but subject to the further order of the Court. It is assumed that the Attorney General will ask the Court to make an order assuring the voting of the stock pending such sale in the manner approved by the Court. A detailed plan for the prompt disposition of the stock of the Lehigh and Wilkes-Barre Coal Company by the Central Railroad of New Jersey has been submitted separately.

READING COMPANY,
By
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General Counsel.

WM. CLARKE MASON,
Solicitor.

R. C. LEFFINGWELL,
Counsel.

Approved on behalf of the United States,

ABRAM F. MYERS,
Special Assistant to the Attorney General.

(The objection of the Attorney General to the provisions of paragraph 7, and also the plan for the sale of the stock of the Lehigh and Wilkes-Barre Coal Company remain the same as in the original plan.)

Opinion.

(Filed May 21, 1921.)

BEFORE BUFFINGTON AND DAVIS, CIRCUIT JUDGES, AND
THOMPSON, DISTRICT JUDGE.

BUFFINGTON, J.

On the return to this Court of the mandate of the Supreme Court of the United States directing, *inter alia*, this Court to enter a decree "dissolving the combination of the Reading Company, the Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, existing and maintained through the Reading Company, *with such provisions for the disposition of the shares of stock and bonds and other property of the various companies*, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other, of the Philadelphia and Reading Railroad Company, the Philadelphia and Reading Coal and Iron Company", etc., we called before us the counsel for the United States and the counsel for the Reading Company and directed the latter, in consultation with the former, to formulate a dissolution plan in conformity with the said mandate. In accordance with these directions, and after consultation by all of said counsel from time to time with the Court, a tentative plan was eventually drafted and placed on file in the Clerk's office, for the inspection of all parties concerned. Subsequently, the Court gave a hearing to all parties who desired to be heard and signified its willingness to receive for consideration, petitions to intervene. Numerous parties and representatives of various interests having thus been heard and numerous briefs having been filed showing the views of the parties concerned, the Court was thereby placed

in possession of such information as enabled it to determine what parties should be allowed to intervene and also to formulate such questions, issues and objections to the proposed plan as would afford a basis for an enlightening and constructive discussion on the part of all parties of record. Accordingly, this Court, by its order of April 12th, 1921, directed it would on May 2d, 1921, hear arguments on the following questions:—

“1. (a) Whether the sale provided for in paragraph Five of the Reading Plan is such a disposition of the interest of Reading Company in the stock of the Philadelphia & Reading Coal & Iron Company as accomplishes the express purpose of the mandate of the Supreme Court of the United States requiring disposition by Reading Company of such stock because the holding of it has been and would be unlawful: (b) and if the mandate is thereby complied with, whether such disposition confers upon any one class of stockholders of Reading Company any benefit to the prejudice of the legal rights of any other class of stockholders.

“2. Whether the stock of the Coal Company should be sold free from the lien of the General Mortgage, or whether a sale of Certificates of Interest therein would be a compliance with the provisions aforesaid of the mandate of the Supreme Court of the United States.

“3. Whether the Reading Company should offer a premium of ten per cent. to the General Mortgage bondholders for release of the Coal Company's property from lien of the mortgage, or whether the requirements of the mandate of the Supreme Court of the United States may be fulfilled by proper injunctive provisions in the decree to be entered in this cause,”

and directed that all parties who desired to be heard should file briefs on April 30, 1921, containing in substance their proposed arguments. Having thus in advance the advantage of the proposed arguments, the Court

found on the day set for argument that, due to a modification of the plan agreed to by the Attorney General of the United States, the counsel for the Reading Company and counsel representing certain holders of bonds secured by the General Mortgage of the Reading Company, substantially all of the above questions were disposed of save those arising under sub-division *b* of the first question. And this feature, briefly stated, resolved itself into an issue as to the relative rights of the preferred and common stock of the Reading Company, arising out of the disposition of the stock of the Philadelphia & Reading Coal & Iron Company, which latter stock was owned by the Reading Company. The stock of the Philadelphia & Reading Coal & Iron Co. so owned by the Reading Company has a par value of eight millions of dollars. It will be noted that this stock holding by the Reading Company in the Coal Company was decreed by the Supreme Court an unlawful holding and was one as to which the Supreme Court directed this Court to enter a decree "with such provision for the disposition of the shares of stock and bonds and other properties of the various companies, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other, of the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company", etc. In the plan proposed this order was complied with in that the offending stock was, under proper restrictions and elections, to be disposed of to all the stockholders, both common and preferred, of the Reading Company. By this stockholding passing from the ownership of the Reading Company and being vested in the disassociated ownership of the individual stockholders with such provisions for safeguarding against an unlawful combination between them as is provided in the proposed decree, and as will be hereafter described, it will be seen the letter and spirit of the mandate of the Supreme Court are complied with. The offending stock passes out of the

ownership of the unlawful holder and neither it nor the proceeds of its sale can be hereafter used in unlawful combination. In that connection it will be noted that the mandate directs a "disposition of shares of stock and bonds and other property held by the Reading Company", and in that respect the mandate has been complied with precisely, in that there has been a "disposition" of the stock, it being taken from the Reading Company, and it has not even been distributed by that company, but, treated as an unlawful holding of that company, it is to be taken by the Court and disposed of absolutely by it, by sale through the agency of a corporation created under the provisions of this decree, to such persons as have qualified to lawfully acquire it. The mere circumstance that those persons are stockholders of the Reading Company is attributable to the fact that in the application of equitable principles and without sacrifice of the spirit of the mandate, they compose a class of suitable recipients, in the manner above stated, of the stock which was unlawfully held by the company of which they were stockholders. In other words, if the carrying out of the mandate had necessitated the use of this stock to reduce, for example, the bonded or other indebtedness of the Reading Company, the stockholders of that company, which unlawfully held the stock to be disposed of would have no claim in law to prevent such disposition. From these considerations it is apparent that whatever this disposition of the stock may be called, it is in no sense an earning of the Reading Company which is to be disposed of by that company as a dividend. It is a taking by the law of an asset of that company, a stock asset, which was and has been owned in specie by Reading Company since the Reading reorganization was formed, and which never was earned or could be earned by the Reading Company itself. Indeed it is now disposed of in substantially the same way as the law would dispose of the property of that company were it being dissolved, and in that connection we deem

it proper to say that, under the facts and circumstances before us, the legal question of dividend distribution between different classes of stockholders is not here involved, and on that question we express no present opinion for the simple reason that we are not dividing profits or earnings.

Seeing then that this stock is not an earning of the Reading Company to be distributed as a dividend, but is a part of its capital disposed of in this case to qualifying shareholders, in the manner provided for by the creation of this intermediate corporation, it will be apparent that this decree of equal right to all shareholders, preferred and common alike, to participate in the sale as ultimate purchasers, is based on the general equitable principle that equality is equity and on the corporate right of all shareholders in a Pennsylvania corporation to share equally on a disposition of its assets. We are therefore of opinion that the plan which embodies these equitable principles should be approved and that the claim of the common shareholders to take all of this stock to the exclusion of the preferred stockholders should be denied. And in approving such plan we note that in point of fact the equity of a common participation of all stockholders, preferred and common, has not only the approval of the Government of the United States that has no interest in the controversy, save to see that equity is done to all; of the Reading Company which has no interest save an impartial stewardship for all its shareholders; and lastly the silently expressed approval of substantially two-thirds of the shares held by common stockholders. This significant and impressive fact cannot but be regarded as highly persuasive of the substantial equity of this plan. Of the 1,400,000 shares of the common stock of the Reading Company, less than one-third object to it. The other two-thirds, having had the opportunity to object and failing to do so, we are warranted in treating as acquiescing in the proposed

plan. Indeed, we are justified from one circumstance in concluding from the positive attitude of a hundred thousand of those shares that the remainder are not only passively acquiescing but really actively approving. This particular block of a hundred thousand shares of the common stock is represented by one man who is a trustee of an estate which owns it and he himself is the owner of one-half of such trust estate. He or the estate have no preferred stock whatever. He is also a Director of the Reading Company and as such favored the plan. By his counsel he appeared at the hearing and strongly urged its adoption, asserting his consent to the preferred stock sharing equally with the common in the disposition of the shares of the Coal Company. His contention was that this equal participation by common and preferred stockholders was not only fair, legal and equitable, but that such a proportionate division tended to the welfare of all parties concerned and indeed was a course which made the plan possible. When it is considered that the non-participation of the preferred stockholders in the shares of the Coal Company and the absorption of all the stock by the common shareholders would have benefited this particular hundred thousand shares by a large sum, this Court may rest assured that the proposed plan by its equality works equity. Without entering upon a further discussion of the questions involved, we are of opinion, after careful and matured consideration, that the plan as amended should be approved and we therefore direct the preparation of a formal decree embodying its terms. We deem it proper to add that such decree shall provide for the creation of a new corporation, to which shall be sold the equities in the shares of the Philadelphia & Reading Coal & Iron Company held by the Reading Company. The rights to purchase the stock of this newly created company will be sold to the preferred and common stockholders of the Reading Company share and share alike. In the creation of such a

corporation by this Court's order, we follow a general course pursued in the case of *United States vs. Du Pont, et al.*, 188 F. R., 127, and the wisdom of so doing will be seen by an examination of the opinion lately filed in that case, where the purpose of such procedure is fully explained. By the creation of this new corporation by the directions of this Court and by its retention of jurisdiction to enforce this decree as therein provided, the Court can, if such contingency should arise, by its control of this newly formed corporation, control all of its stockholders and prevent such stock from ever being used to thwart the decree made in pursuance of the plan.

The paragraph of the original Reading Plan numbered eight, which is paragraph numbered seven of the plan as modified in accordance with the agreement between Reading Company and the Attorney General of the United States as of May 12, 1921, contains the only provision in the plan proposed to carry out the mandate of the Supreme Court of the United States which is not agreed to in all of its details by the Reading Company and the Attorney General, and as to this provision of the plan the disagreement relates only to a matter of time.

The section referred to concerns the disposition by the Reading Company of the stock of the Central Railroad of New Jersey owned by the former, and as to this disposition Reading Company and the Attorney General agree, that the stock shall be transferred to one or more trustees, individual or corporate, to be held and voted under the terms of the trust until sold to a purchaser other than the parties defendant in this cause.

Reading Company contends that the spirit and the letter of section five of the Interstate Commerce Act, as amended by the Transportation Act of 1920, justifies its prayer that the value of this stock of the Central Railroad Company of New Jersey shall not be subjected to possible sacrifice by a sale until the Interstate Commerce

Commission shall adopt a consolidation plan which will designate the several railroads of the East with which the Central Railroad Company of New Jersey may be consolidated, so that assurance may be given to a railroad company purchaser of this stock that the holding of it by such purchaser will not be objectionable.

The Attorney General has contended that the stock should be placed in the hands of a trustee or trustees under a decree of this Court which shall direct Reading Company to proceed with all due diligence to offer the same for sale within a definite period, and if at the expiration of such period a purchaser has not been found by Reading Company, then upon the application of the Attorney General the Court may decree a sale of this stock at public auction or in such manner as the Court shall then provide.

The Court is of opinion that because of the provisions of the Transportation Act of 1920 there is presently no prospective purchaser of the Jersey Central stock at a fair price, and so long as the control of the voting power of this stock is taken from Reading Company and lodged with a trustee or trustees, acting under the supervision of this Court, there is full compliance with the mandate of the Supreme Court, which requires that there shall be established entire independence between these two companies, and we are also of opinion there is no good reason why the decree of this Court shall now subject the stock to the possible sacrifice of a forced sale to the detriment not only of the Reading Company but also to the almost equal number of other shareholders of the Jersey Central who are not parties to this record, who have no right to be heard and yet who may be very seriously affected by a decree of this Court ordering at the present time, a forced sale of this majority stock.

The final decree to be entered herein, therefore, will direct the transfer of the stock of the Central Railroad

Company of New Jersey, owned by Reading Company, to such trustee or trustees, individual or corporate, as the Court may name, and shall contain the terms of the trust, which in substance shall provide that the stock shall be voted by the trustee or trustees so that at all times there shall be entire independence of directors and management between Reading Company, as it shall be hereafter merged with Reading Railway Company, and the Central Railroad Company of New Jersey; and that pending a sale of the stock all dividends received by the trustee or trustees upon the same shall be paid to Reading Company or as it shall direct, and that the actual sale of the stock of the Central Railroad Company of New Jersey shall be deferred in view of the possible grouping of railroads by the Interstate Commerce Commission under the Transportation Act of 1920, subject, however, to a provision in the decree that on motion of the United States or other party, or upon the Court's own initiative, that without awaiting such action by the Interstate Commerce Commission, an order may be entered hereafter, for the sale of such stock, if and when it shall appear to the Court that the facts require it, or the situation makes it possible.

It is, therefore, ordered that counsel for the Reading Company, and the Attorney General of the United States, shall prepare and submit to the Court within fifteen days a form of Decree to make effective the mandate of the Supreme Court of the United States in the above entitled cause, in accordance with the provisions of the modified plan agreed to by the Reading Company and the Attorney General of the United States and in conformity with this opinion.

Decree.

(Filed June 6, 1921.)

A decree of this Court having been entered in the above cause on October 28, 1915, and the said cause having been appealed by both parties to the Supreme Court of the United States, and that court having affirmed in part and in part reversed the decree of this Court, a mandate from the Supreme Court containing directions as to the decree to be entered was filed herein on the 13th day of August, 1920.

On October 8, 1920, this Court entered an interlocutory decree by which it was ordered "That within ninety days from the entry of this decree the defendants shall submit to this Court a plan for the dissolution of the unlawful combination between Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, the Central Railroad Company of New Jersey, and the Lehigh & Wilkes-Barre Coal Company, existing and maintained through the Reading Company, with such provision for the disposition of the shares of stock and bonds and other property of the various companies, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other, of the Philadelphia & Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey and the Lehigh & Wilkes-Barre Coal Company, to the end that the affairs of all these now combined companies may be conducted in harmony with the law."

Thereafter the time within which to present said Plan was extended by this Court until February 14, 1921, on which date a Plan was filed herein pursuant to said interlocutory decree, a counter-proposal filed by the United States to paragraph 8 of said Plan (paragraph 7 of the modified Plan) and an order entered directing that a

copy of said Plan be served upon the Central Union Trust Company of New York, Trustee under the General Mortgage referred to therein, and that copies be open to the inspection of all stockholders of the defendant companies. The said counter-proposal of the United States was as follows:

“Reading Company shall, with all due diligence, offer for sale at a reasonable price and upon reasonable terms the stock of the Central Railroad Company of New Jersey now owned by it for a period of years. If at the expiration of such period a sale of such stock has not been made, then, upon application of the Attorney General, the Court may decree a sale at public auction at a price not less than a minimum price to be agreed upon between the Reading Company and the Attorney General. During this period Reading Company shall accept any offer by a responsible purchaser made in good faith and at a reasonable price and in the event of any disagreement between an intending purchaser, who has complied with the foregoing provisions, and the Reading Company, then the matter shall be referred to the Attorney General for his advice and if the parties shall still be at a disagreement, then any party (Reading Company, the United States, or the intending purchaser) may bring the matter to the attention of the Court for its decision. A purchaser under this provision must be approved by the Attorney General, and, if a railroad company, shall apply to the Interstate Commerce Commission for its authority to make such purchase under paragraphs two and three of Section 407 of the Transportation Act of 1920.

“For the purpose of carrying out such a provision, jurisdiction of the case shall be retained by the Court.”

This cause came on for further hearing on March 1, 1921, and leave was given by this Court to all persons alleging interest herein to petition for leave to intervene. By permission of this Court the United States filed a

supplemental bill to make said Central Union Trust Company of New York, Trustee under said General Mortgage, a party defendant in this cause, and said Trust Company filed an answer thereto on March 18, 1921. Holders of General Mortgage bonds and of preferred and common stock of defendant Reading Company filed petitions for leave to intervene, and the Reading Company duly filed its answer to the petitions of intervening common stockholders and cross petition dated April 5, 1921.

By order entered herein on April 12, 1921, leave to intervene as parties defendant herein was granted to all who had petitioned for leave to intervene and Central Union Trust Company of New York was made a party herein.

By order entered herein on April 12, 1921, the Court directed that it would on May 2, 1921, hear argument upon the following questions:

"1. (a) Whether the sale provided for in paragraph five of the Reading Plan is such a disposition of the interest of Reading Company in the stock of the Philadelphia & Reading Coal & Iron Company as accomplishes the express purpose of the mandate of the Supreme Court of the United States requiring disposition by Reading Company of such stock because the holding of it has been and would be unlawful; (b) and if the mandate is thereby complied with, whether such disposition confers upon any one class of stockholders of Reading Company any benefit to the prejudice of the legal rights of any other class of stockholders.

2. Whether the stock of the Coal Company should be sold free from the lien of the General Mortgage, or whether a sale of Certificates of Interest therein would be a compliance with the provisions aforesaid of the mandate of the Supreme Court of the United States.

3. Whether the Reading Company should offer a premium of ten per cent. to the General Mortgage bondholders for release of the Coal Company's prop-

erty from the lien of the mortgage, or whether the requirements of the mandate of the Supreme Court of the United States may be fulfilled by proper injunctive provisions in the decree to be entered in this cause,"

and directed that all parties who desired to be heard should file briefs on April 30, 1921, containing in substance their proposed arguments.

This cause came on for further hearing on May 2, 1921, and the defendant Reading Company, with the approval of the Attorney General of the United States, submitted, in open court, modifications of the Plan, which met the objections of the bondholders and trustee under the General Mortgage, and all parties desiring to be heard were duly heard. Such modifications were thereafter reduced to writing by defendant Reading Company and the Attorney General of the United States and filed herein on May 12, 1921. The objection of the Attorney General of the United States to the provisions of paragraph 8 of the Plan (paragraph 7 of the Modified Plan), however, remained.

The Modified Plan, providing for the dissolution of the unlawful combination between Reading Company, Philadelphia and Reading Railway Company, (hereinafter called the Railway Company), The Philadelphia and Reading Coal and Iron Company (hereinafter called the Coal Company) and The Central Railroad Company of New Jersey (hereinafter called the Jersey Central), is as follows:

Modified Plan printed herein, *supra*, pp. 274 to 277, inclusive.

The plan for the disposition of the stock of The Lehigh & Wilkes-Barre Coal Company by the Jersey Central was submitted in a form to be embodied in a decree and is incorporated herein in section 8 hereof.

After consideration of the petitions, answer, briefs and oral arguments, the Court filed on May 21, 1921, its opinion in this cause.

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The above recited Modified Plan is hereby approved as supplemented by the provisions of this decree.

2. The Reading Company, the Railway Company and the Coal Company shall consummate the provisions of the Modified Plan as so supplemented.

3. The Reading Company shall, subject to the lien of the General Mortgage, sell, assign and transfer all its right, title and interest in and to the stock of the Coal Company, including the present right to vote and receive dividends thereon, to a new corporation to be formed with appropriate powers, and shall execute and deliver to Central Union Trust Company of New York, Trustee under the General Mortgage, and defendant Central Union Trust Company of New York shall honor (unless default shall be made and continue as provided in the General Mortgage), an irrevocable order directing it to execute and deliver to such new corporation suitable powers of attorney or proxies to vote such stock and orders for the payment of dividends thereon. Section 5 of the Modified Plan is supplemented as follows:

a. The names of the officers and directors of the new corporation to be elected and appointed in the first instance shall be submitted to the Court for its approval, and no officer or director of the new corporation shall be an officer or director of the Reading Company.

b. The Reading Company shall not sell, assign or transfer its right, title and interest in the stock of the Coal Company to the new corporation unless and until the new corporation shall enter its appearance herein by counsel and thereby submit itself to the jurisdiction of this Court for all purposes of this cause; and it shall thereupon become a party defendant in this cause and subject to the provisions of this decree. No dividends shall be declared or

paid on the stock of the Coal Company, prior to the sale, assignment and transfer by the Reading Company of its right, title and interest therein to the new corporation, except from current earnings subsequent to December 31, 1920.

c. The stock of the new corporation shall be issued to a Trustee or Trustees appointed by the Court. Such Trustee or Trustees shall issue certificates of interest therein as contemplated by the Modified Plan and as hereinafter provided. The Reading Company shall offer such certificates of interest for subscription to its stockholders, preferred and common, share and share alike, and may issue to them assignable warrants evidencing their right to subscribe for said certificates of interest. Neither the defendant Reading Company nor any corporation controlled by it nor any person acting in its interest shall acquire by purchase or otherwise any of said certificates of interest. Such certificates of interest shall be delivered to the subscribers therefor upon payment in full of the subscription price and compliance in all respects with the terms prescribed in the offer. All such certificates shall be registered by the Trustee or Trustees in the names of the purchasers. They shall be substantially in the form hereto annexed marked "Form A".

d. The Trustee or Trustees shall be entitled, and it shall be their duty, to vote or issue proxies for voting in respect of any and all of said shares of the new corporation held by the said Trustee or Trustees unless otherwise hereafter directed by this Court.

e. The Trustee or Trustees shall collect and receive any and all cash dividends paid on the stock of the new corporation held by the Trustee or Trustees. Upon the exchange, as hereinafter set forth, of any certificate of interest for shares of capital stock of the new corporation held by the Trustee or Trustees, the Trustee or Trustees shall pay in cash to the owner of the certificate of interest so exchanged or upon his order the amount of all cash dividends collected by the Trustee or Trustees, in respect of

the number of shares represented by such certificate of interest, but without interest thereon, and shall execute and deliver to such owner or upon his order a dividend order or assignment for the amount of any dividends declared but not then payable in respect of shares vested at the time of such exchange in the Trustee or Trustees as the registered stockholder entitled thereto. Any interest realized or allowed by the Trustee or Trustees upon funds paid to the Trustee or Trustees as dividends shall be applicable to the payment of the compensation of the Trustee or Trustees and the expenses of the administration of the trust, and any balance thereof remaining shall be paid to the defendant Reading Company unless otherwise ordered by the Court.

All dividends payable otherwise than in cash which shall be declared by the new corporation shall be received and held by the Trustee or Trustees for the *pro-rata* benefit of said registered owners, from time to time, of the certificates of interest, upon the same terms and conditions as the shares originally deposited, and shall be distributed to the persons who shall be the respective owners of the certificates of interest when and as, and only when and as, the shares originally deposited are distributed to them respectively, subject to any necessary adjustment by scrip or otherwise, in the discretion of the Trustee or Trustees, in respect of fractional shares.

No deduction shall be made by the Trustee or Trustees in the distribution of such dividends or subscription rights for any commissions or expenses of the Trustee or other costs of collection or payment.

f. Upon surrender of any outstanding certificates of interest by the registered owner thereof or his assignee, the Trustee or Trustees shall deliver to him stock certificates for the number of shares of the new corporation represented by the surrendered certificate of interest, which stock certificates shall be issued by the new corporation and registered on its books in the name of the new holder, upon condition, however, that the applicant for such exchange shall file with the Trustee a duly executed affidavit in one of the forms hereto annexed.

4. The provisions of Section 7 of the Modified Plan shall be consummated as follows:

a. The Reading Company shall transfer to a Trustee or Trustees to be appointed by this Court (hereinafter called the Jersey Central Trustee), subject to the lien of the Jersey Central Collateral Trust Mortgage dated April 1, 1901 (hereinafter called the Jersey Central Collateral Trust) from Reading Company to The Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee (hereinafter called the Pennsylvania Company), its right, title and interest in the stock of the Jersey Central.

b. The Jersey Central Trustee shall hold said right, title and interest in said shares of stock transferred to it as hereinabove provided, subject to the order of this Court. The final disposition of said stock shall be deferred in view of the possible groupings of railroads by the Interstate Commerce Commission under the Transportation Act of 1920, until ordered by this Court. The Court may in its discretion upon its own initiative or upon motion of the United States or the Reading Company without waiting such action by the Interstate Commerce Commission, enter an order for the sale of such stock, if and when it shall appear that the facts require it, or the situation makes it possible.

c. The Jersey Central Trustee shall be entitled, and it shall be its duty, to vote or cause to be voted all said shares of the Jersey Central unless otherwise hereafter directed by the Court. The Reading Company is hereby enjoined and restrained from voting upon any such shares of stock of the Jersey Central. The Reading Company shall from time to time direct the Pennsylvania Company, pursuant to the provisions of said Jersey Central Collateral Trust, to execute and deliver to the Jersey Central Trustee or its nominees suitable powers of attorney or proxies to vote upon such shares of stock.

d. Pending the entry of an order by this Court directing the final disposition of the Jersey Central stock, the Jersey Central Trustee is hereby enjoined

and restrained from exercising the voting power on the Jersey Central stock in such a way as to cause any dependence or intercorporate relations between the defendants Reading Company and the Jersey Central, and in particular from voting so that any officer or director of the Reading Company shall be elected an officer or director of the Jersey Central.

c. Pending the final disposition of the Jersey Central stock the Reading Company shall be entitled to receive all cash dividends on the stock of the Jersey Central. All dividends payable otherwise than in cash which shall be declared by the Jersey Central shall be received and held by the Jersey Central Trustee upon the same terms and conditions as the right, title and interest of Reading Company in the shares of stock in the Jersey Central originally transferred until finally disposed of as may be directed by order of this Court.

5. The defendants Reading Company, the Railway Company and the Coal Company shall proceed with due diligence to carry out the provisions of this decree and shall issue calls for meetings of their respective stockholders according to law for the purpose of submitting to the stockholders for their approval such action as may be appropriate to carry out the provisions of the Modified Plan as approved and supplemented by this decree or in connection therewith. As stockholder of the Railway Company and the Coal Company the Reading Company shall exercise its right to vote upon the stock of said companies, respectively, for the purpose aforesaid, and shall demand, and the defendant Central Union Trust Company of New York shall execute and deliver to it or its nominees, suitable powers of attorney or proxies for such purpose. Within six months from the date of this decree the defendants Reading Company, the Railway Company, and the Coal Company, shall report in writing to the Court what has been accomplished in carrying out the provisions of this decree.

6. If by reason of default on the General Mortgage bonds Central Union Trust Company of New York, the Trustee under the General Mortgage, shall exercise the right to vote the stock of the Coal Company, it shall so exercise that right as not to bring about unity of management between the Coal Company and the Reading Company; and in the event that said Trustee at any time is obliged to sell the stock or properties of the Coal Company, it shall dispose of such stock and properties separately from the properties of the Reading Company and to different interests.

7. The Coal Company is hereby permanently enjoined from issuing to the Reading Company, and the Reading Company is enjoined from receiving, any stock, bonds, or other evidences of corporate indebtedness of the Coal Company, in addition to the \$25,000,000 of four per cent. bonds provided for in paragraph 2 of the Modified Plan, except such evidences of current indebtedness as may be lawful between shipper and carrier.

8. The Central Railroad Company of New Jersey shall dispose of all the capital stock of The Lehigh & Wilkes-Barre Coal Company now owned by it to persons or corporations who are not its own stockholders or stockholders in either the Reading Company, the Railway Company or the Coal Company, and who previous to or at the time of purchase shall qualify as purchasers by a duly executed affidavit in one of the forms hereto annexed.

The affidavit in the case of an individual purchasing in his own right shall be substantially in the form hereto annexed marked "Form F".

If the purchaser is a corporation or a joint-stock company, the affidavit shall be executed by its president, vice-president, secretary or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substantially in the form hereto annexed marked "Form G".

If the purchaser is a partnership the affidavit shall be executed by one of the partners and shall be substantially in the form hereto annexed marked "Form H".

If the purchaser is an executor, administrator, guardian, or testamentary or other trustee of an express trust, the affidavit shall be executed by such executor, administrator, guardian or trustee as the case may be, or by one of such if the application is made on behalf of joint representatives, or, if such representative is a corporation or joint stock company, by its president, vice-president, secretary or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substantially in the form hereto annexed marked "Form I".

All of the said stock shall be disposed of within six months after the entry of this decree, or previous to any other later date which may be fixed by the Court. Stock may be disposed of in such manner and upon such terms as the Jersey Central may determine; provided, however, that it shall only be acquired by persons or corporations qualified to receive it under the terms of the said affidavits, and provided, further, not less than twenty per cent. shall be paid in cash at the time of its disposition by persons or corporations acquiring it.

On or before the date fixed by the Court before which the disposal of such stock shall be completed, the Jersey Central shall file or cause to be filed with the clerk of this Court a statement containing the names of the persons, corporations or partnerships to whom such stock has been disposed of and the number of shares acquired by each, to which statement shall be annexed the said affidavits.

Should all of the said stock not be disposed of before the expiration of six months after entry of this decree or previous to any later date which may be fixed by the Court, the remainder shall be then transferred to the Central Union Trust Company of New York (hereinafter

called the Wilkes-Barre Trustee) as the custodian and depository of the Court, subject to the provisions of this decree and to the further orders and decrees of the Court herein. Such stock shall be registered in the name of the Wilkes-Barre Trustee on the books of The Lehigh & Wilkes-Barre Coal Company and certificates therefor delivered to the Wilkes-Barre Trustee.

Such stock, together with any dividends received by the Wilkes-Barre Trustee thereon, shall be transferred by the Wilkes-Barre Trustee from time to time to persons to whom The Central Railroad Company of New Jersey may have sold the same and who are qualified to receive it under the terms of this decree.

Pending transfer the Wilkes-Barre Trustee shall receive such dividends declared on any stock standing in its name and may vote thereon at any stockholders' meeting.

The said Wilkes-Barre Trustee, having declared its submission to the jurisdiction of this Court for the purpose of carrying out this provision of this decree and having entered its appearance herein by counsel, is made a party hereto.

The Jersey Central shall from time to time, upon the request of the Attorney-General of the United States, furnish him with any information which he may require relating to the carrying out of this decree.

In order to enable the Jersey Central to dispose of the said stock of The Lehigh & Wilkes-Barre Coal Company to the greatest advantage without any accumulated dividends, the injunction heretofore granted in this suit is hereby modified so as to permit the Jersey Central to collect and receive any dividends which have been or may be declared upon the stock of The Lehigh & Wilkes-Barre Coal Company previous to disposition thereof.

9. All Trustees appointed by or pursuant to the foregoing provisions of this decree shall be entitled to reasonable compensation, the amount thereof to be approved by

the Court, for all services rendered by them as such Trustees. The compensation of the Trustees appointed pursuant to Sections 3 and 4 hereof, together with counsel fees, taxes and other expenses incurred hereunder and approved by the Court, shall be paid by the defendant Reading Company except so far as provided for under the provisions of paragraph *e* of Section 3 hereof. The compensation of the Trustee appointed by Section 8 hereof, together with counsel fees, taxes and other expenses incurred hereunder and approved by the Court, shall be paid by the Jersey Central.

Any Trustee or Trustees appointed by or pursuant to any provisions of this decree may at any time or from time to time appoint an agent or agents, and may delegate to any such agent or agents the performance of any administrative duties of such Trustee or Trustees.

10. Any individual or corporation appointed as trustee by or pursuant to this decree shall be subject to removal by this Court in its discretion, and, in the event of such removal, the Court shall appoint any other individual or corporation, as successor.

11. Any individual, or corporation, appointed as trustee by or pursuant to this decree, or any agent of any such trustee, shall be accountable for action hereunder only in proceedings in this cause and any order of this Court entered upon notice to such trustee, or such agent, to the Attorney-General of the United States and to the defendants, the Reading Company, the Railway Company, the Coal Company, the Jersey Central and The Lehigh & Wilkes-Barre Coal Company, and to the new corporation, shall be full protection for any action taken pursuant thereto.

12. Any such trustee or any of the parties to this cause mentioned in Section 11 may make application to

the Court at any time for such further orders and directions as may be necessary or proper in relation to the carrying out of the provisions of this decree, and jurisdiction of this cause is retained for the purpose of giving full effect to this decree and the decree entered herein on October 8, 1920, and for the purpose of making such other and further orders and decrees or taking such other action, if any, as may be necessary or appropriate to the carrying out and enforcement of said decrees and the directions of the Supreme Court.

June 6, 1921.

Per Curiam

JOS. BUFFINGTON,
J. WARREN DAVIS,
J. WHITAKER THOMPSON.

FORM A.

No. Shares.

CERTIFICATE OF INTEREST.

IN

COMPANY STOCK.

This is to certify that the undersigned (hereinafter designated as the "Trustee") has received and now holds for or assigns, certificates representing shares of the capital stock of the Company, a corporation of the State of , without par value, subject to the terms of a decree entered the day of June, 1921, by the District Court of the United States for the Eastern District of Pennsylvania, in the suit of the United States of America against Reading Company and others, to which de-

cree reference is hereby made for a statement of the terms and conditions upon which this certificate is issued and of the rights of the holder hereof, and to which decree the holder of this certificate assents by acceptance hereof.

This certificate is one of a series of certificates issued by the undersigned in accordance with the terms of said decree, representing in the aggregate not exceeding 1,400,000 shares of the capital stock of said

Company.

The registered owner hereof, or his assigns, is entitled, upon the surrender of this certificate and upon filing with the Trustee an affidavit in the form required by section 3f of said decree (to the effect, in substance, that the applicant does not own any shares of the capital stock of the Reading Company and is not acting for or on behalf of any stockholders of the Reading Company, or in concert, agreement or understanding with any other person, firm, or corporation for the control of the

Company in the interest of the Reading Company but in his own behalf in good faith) to receive a stock certificate for the number of shares of the capital stock of said

Company represented by this certificate and to receive the amount of all dividends (but without interest thereon) appertaining to the number of shares represented by this certificate collected and received by the Trustee prior to such exchange; also to receive a dividend order or assignment executed by the Trustee for any dividend declared but not then payable, appertaining to said shares which shall be vested, at the time of such conversion, in the Trustee as the registered holder of said shares.

This certificate is transferable by the registered owner hereof, in person or by his duly authorized attorney, at the office or agency of the Trustee in the City of New York upon surrender and cancellation hereof; and thereupon one or more new certificates for a like number of

shares will be issued to the transferee in exchange therefor.

This certificate is not valid until countersigned by the registrar.

IN WITNESS WHEREOF,
as Trustee, has caused this certificate to be executed
by
this day of , 1921.

Trustee.

By

Countersigned:

Registrar.

FORM OF ASSIGNMENT.

For value received the undersigned hereby sells, assigns, and transfers unto the interest in _____ Company shares and dividends thereon represented by the within certificate and does hereby irrevocably constitute and appoint _____ attorney to transfer the same on the books of the _____, Trustee, with full power of substitution in the premises.

Dated.....

In the presence of:

.....

.....

FORM B.

STATE OF....., County of, ss:

....., being duly sworn,
deposes and says:

That deponent is a *bona fide* owner in his (or her) proper right of a certificate or certificates of interest numbered for shares registered in the name of issued by as Trustee, under a decree entered on the day of June, 1921, by the District Court of the United States for the Eastern District of Pennsylvania, in the suit of the United States of America against Reading Company and others, and makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Company held by said Trustee, in exchange for said certificate (or certificates) of interest. That deponent does not own in his (or her) own right any shares of the capital stock of the Reading Company, a corporation of the Commonwealth of Pennsylvania, whether registered in his (or her) own name on the books of said Reading Company or registered in the names of others for deponent's use and benefit. That deponent, in making this application, is not acting for or on behalf of any stockholder of the Reading Company, or in concert, agreement, or understanding with any other person, firm or corporation for the control of the Company in the interest of the Reading Company, but in his (or her) own behalf in good faith.

Sworn to before me this)
day of , 1921. (

....., being duly sworn,
deposes and says:

shares, registered in the name of
issued by

Company held by said Trustee, in exchange for said certificate (or certificates) of interest. That said applicant does not own in its right any shares of the capital stock of the Reading Company, a corporation of the Commonwealth of Pennsylvania, whether registered in its own name on the books of said Reading Company or registered in the names of others for said applicant's use and benefit. That said applicant, in making this application, is not acting for or on behalf of any stockholder of the Reading Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Company in the interest of the Read-

of the Company in the interest of the Reading Company, but in its own behalf in good faith.

Sworn to before me this }
day of , 1921. }

FORM D.

STATE OF....., County of....., ss:

....., being duly sworn,
deposes and says:

That he is a member of the partnership of
....., hereinafter called the "Applicants"; that
said applicants are the *bona fide* owners in their own
proper right of a certificate or certificates of interest
numbered for shares, registered in
the name of , issued by

..... as Trustee, under a decree entered on
the day of June, 1921, by the District Court of
the United States for the Eastern District of Pennsyl-
vania, in the suit of the United States of America against
Reading Company and others, and deponent makes this
affidavit for the purpose of procuring the issue of shares
of the capital stock of the

Company held by said Trustee in exchange for said cer-
tificate (or certificates) of interest. That said applicants
do not own in their own right any shares of the capital
stock of the Reading Company, a corporation of the Com-
monwealth of Pennsylvania, whether registered in the ap-
plicants' own name on the books of said Reading Com-
pany or registered in the names of others for their use
and benefit. That said applicants, in making this applica-
tion, are not acting for or on behalf of any stockholder
of the Reading Company, or in concert, agreement, or
understanding with any other person, firm, or corporation
for the control of the Company in the inter-
est of the Reading Company, but in their own behalf in
good faith.

Sworn to before me this }
day of , 1921. }

FORM E.

STATE OF, County of, ss:

....., being duly sworn,
deposes and says:

That is he of ;
that the trust estate represented by deponent is the
bona fide owner in its proper right of a certificate or
certificates of interest numbered for
shares, registered in the name of ,
issued by , as Trustee,
under a decree entered on the day of June,
1921, by the District Court of the United States for
the Eastern District of Pennsylvania, in the suit of
the United States of America against Reading Com-
pany and others. That deponent makes this affidavit
for the purpose of procuring the issue of shares of the
capital stock of Company
held by said Trustee, in exchange for said certificate
(or certificates) of interest. That said trust estate
does not own any shares of the capital stock of the
Reading Company, a corporation of the Common-
wealth of Pennsylvania, whether registered in the name
of said trust estate on the books of said Reading Com-
pany or registered in the names of others for the use
and benefit of said trust estate. That said trust estate,
in making this application, is not acting for or on be-
half of any stockholder of the Reading Company, or
in concert, agreement, or understanding with any other
person, firm, or corporation for the control of the
..... Company in the interest of
the Reading Company, but in its own behalf in good
faith.

Sworn to before me this }
day of , 1921. }

FORM F.

STATE OF, County of, ss:

....., being duly sworn, deposes and says: That deponent is the *bona fide* purchaser in his (or her) own proper right of a certificate or certificates for shares of the capital stock of The Lehigh & Wilkes-Barre Coal Company, transferred to him (or her) by The Central Railroad Company of New Jersey under a decree entered on the day of, 1921, in the suit of The United States of America *vs.* Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, *et al.*, and makes this affidavit at or previous to the time of the issuance to him (or her) of such certificate or certificates for the purpose of evidencing his (or her) right to receive the same. That deponent does not own in his (or her) own right any shares of the capital stock of The Central Railroad Company of New Jersey, Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, whether registered in his (or her) own name on the books of said companies or any of them or registered in the names of others for deponent's use and benefit. That deponent in receiving the said certificate or certificates is not acting for or on behalf of any stockholder of The Central Railroad Company of New Jersey or of any other of the said companies or in concert, agreement or understanding with any other person, firm or corporation for the control of The Lehigh & Wilkes-Barre Coal Company in the interest of The Central Railroad Company of New Jersey or of any other of the said companies, but is acting in his (or her) own behalf in good faith.

Sworn to before me this }
 day of , 1921. }

FORM G.

STATE OF, County of, ss:

....., being duly sworn, deposes and says: That he is of
, a corporation (or a joint stock company). That said corporation is the *bona fide* purchaser in its own proper right of a certificate or certificates for shares of the capital stock of The Lehigh & Wilkes-Barre Coal Company, transferred to it by The Central Railroad Company of New Jersey under a decree entered on the day of, 1921, in the suit of The United States of America *vs.* Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company *et al.*, and makes this affidavit at or previous to the time of the issuance to it of such certificate or certificates for the purpose of evidencing its right to receive the same. That said corporation does not own in its own right any shares of the capital stock of The Central Railroad Company of New Jersey, Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, whether registered in its own name on the books of said companies or any of them or registered in the names of others for its use and benefit. That said corporation in receiving the said certificate or certificates is not acting for or on behalf of any stockholder of The Central Railroad Company of New Jersey or of any other of the said companies or in concert, agreement or understanding with any other person, firm or corporation for the control of The Lehigh & Wilkes-Barre Coal Company in the interest of The Central Railroad Company of New Jersey or of any other of the said companies, but is acting in its own behalf in good faith.

Sworn to before me this }
 day of , 1921.}

FORM H.

STATE OF, County of, ss:

....., being duly sworn, deposes and says: That he is a member of the partnership of (hereinafter called the "Partnership"). That said partnership are the *bona fide* purchasers in their own proper right of a certificate or certificates for shares of the capital stock of The Lehigh & Wilkes-Barre Coal Company, transferred to them by The Central Railroad Company of New Jersey under a decree entered on the day of, 1921, in the suit of The United States of America *vs.* Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, *et al.*, and makes this affidavit at or previous to the time of the issuance to them of such certificate or certificates for the purpose of evidencing their right to receive the same. That said partnership does not own in their own right any shares of the capital stock of The Central Railroad Company of New Jersey, Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, whether registered in their own name on the books of said companies or any of them or registered in the names of others for their use and benefit. That said partnership in receiving the said certificate or certificates is not acting for or on behalf of any stockholder of The Central Railroad Company of New Jersey or of any other of the said companies or in concert, agreement or understanding with any other person, firm or corporation for the control of The Lehigh & Wilkes-Barre Coal Company in the interest of The Central Railroad Company of New Jersey or of any other of the said companies, but is acting in their own behalf in good faith.

Sworn to before me this }
day of , 1921. }

FORM I.

STATE OF, County of, ss:

....., being duly sworn,
deposes and says: That he is of ;
that the trust estate represented by deponent is the *bona fide* purchaser in its own proper right of a certificate or
certificates for shares of the capital stock of
The Lehigh & Wilkes-Barre Coal Company transferred
to him by the Central Railroad of New Jersey under a
decree entered on the day of June, 1921,
in the suit of the United States of America *vs.* Reading
Company, Philadelphia & Reading Railway Company,
The Philadelphia & Reading Coal & Iron Company, The
Central Railroad Company of New Jersey, The Lehigh
& Wilkes-Barre Coal Company, *et al.*, and makes this
affidavit at or previous to the time of the issuance to him
of such certificate or certificates for the purpose of evi-
dencing his right to receive the same. That said trust
estate does not own any shares of the capital stock of The
Central Railroad Company of New Jersey, the Reading
Company, Philadelphia & Reading Railway Company,
The Philadelphia & Reading Coal & Iron Company
whether registered in the name of said trust estate on the
books of said companies or any of them or registered in
the names of others for the use and benefit of said trust
estate. That said trust estate in receiving the said certi-
ficate or certificates is not acting for or on behalf of any
stockholder of The Central Railroad of New Jersey or
of any other of the said companies, or in concert, agree-
ment, or understanding with any other person, firm, or
corporation for the control of The Lehigh & Wilkes-Barre
Coal Company in the interest of The Central Railroad of
New Jersey or of any other of the said companies but is
acting in its own behalf in good faith.

Sworn to before me this }
day of , 1921. }

Order Appointing Trustees.

(Filed June 11, 1921.)

A decree having been entered in the above-entitled cause on June 6, 1921, providing, in section 3, for the appointment of certain trustees, known as Coal Company Trustees, to hold the stock of the new company to be organized as in said section provided, and further providing, in section 4, for the appointment of certain trustees, known as Jersey Central Trustees, to hold Reading Company's equity in the stock of The Central Railroad Company of New Jersey,

Now, therefore, the Court being fully advised in the premises by this order doth appoint as Coal Company Trustees Newton H. Fairbanks, of Springfield, Ohio, and Joseph B. McCall, of Philadelphia, Pennsylvania, and doth appoint as Jersey Central Trustees, R. E. McCarty, of Pittsburgh, Pennsylvania, and C. S. W. Packard, of Philadelphia, Pennsylvania.

The two groups of trustees thus appointed shall proceed diligently to perform the duties conferred upon them, respectively, by the provisions of the aforesaid decree of June 6, 1921. In case the members of either group shall disagree in the exercise of the voting power of stock committed to their charge, or in respect of any matter within the scope of their duties, they, or either of them, may apply to the Court for its direction.

Dated June 11, 1921.

Per Curiam,

JOS. BUFFINGTON,
J. WARREN DAVIS,
J. WHITAKER THOMPSON.

**Petition of Continental Insurance Company and Fidelity-Phenix
Fire Insurance Company for Appeal.**

(Filed June 16, 1921.)

Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York, having intervened herein as parties defendant pursuant to the order of this Honorable Court made and entered on April 12, 1921, granting them leave so to do, and conceiving themselves aggrieved by the Final Decree entered in the above entitled and numbered cause on June 6, 1921, present this petition by their counsel and pray an appeal from said Final Decree to the Supreme Court of the United States.

The particulars wherein and the reasons wherefor your petitioners conceive the said decree erroneous are set forth in the assignments of error filed herewith, to which reference is made.

Your petitioners further pray that an order be made by this Honorable Court fixing the amount of the security which they shall furnish upon such appeal, including security for all damages and costs in the event that they shall fail to make their plea good, and that upon giving such security so much of the aforesaid decree as is contained in the paragraphs thereof hereinafter set forth, be superseded and all action and proceedings thereunder or with respect thereto stayed until the determination of such appeal by the Supreme Court of the United States, to wit:

(a) Paragraph 1 of said decree insofar as it approves that part of Section 5 of the Modified Plan which provides with respect to the issue by the new corporation of 1,400,000 shares of stock without par value, that—

“Such no par value stock will be sold by the new corporation to the stockholders of the Reading Company, preferred and common, share and share alike, for \$5,600,000 at \$2 for each share of Reading stock”

as supplemented by that part of subdivision (c) of paragraph 3 of said decree which provides that—

“Such Trustee or Trustees shall issue certificates of interest therein” (stock of the new corporation) “as contemplated by the Modified Plan and as hereinafter provided. The Reading Company shall offer such certificates of interest for subscription to its stockholders, preferred and common, share and share alike, and may issue to them assignable warrants evidencing their right to subscribe for said certificates of interest.”

(b) Paragraph 2 of said decree insofar as it directs that the Reading Company shall consummate those of the provisions of Section 5 of the Modified Plan as supplemented by subdivision (c) of paragraph 3 of said decree as hereinabove set forth.

(c) That part of subdivision (c) of paragraph 3 of said decree which provides that—

“The Trustee or Trustees shall issue certificates of interest therein” (stock of the new corporation) “as contemplated by the Modified Plan and as hereinafter provided. The Reading Company shall offer such certificates of interest for subscription to its stockholders, preferred and common, share and share alike, and may issue to them assignable warrants evidencing their right to subscribe for said certificates of interest.”

(d) That part of paragraph 5 of said decree which provides that—

“The Reading Company * * * shall proceed with due diligence to carry out the provisions of this decree and shall issue calls for meetings of * * * stockholders according to law for the purpose of submitting to the stockholders for their approval such action as may be appropriate to carry out the provisions of the Modified Plan as approved and supplemented by this decree or in connection therewith.”

insofar as the same applies to any meetings of, action or approval by, stockholders of the Reading Company or others with respect to that part of Section 5 of the Modified Plan as supplemented by subdivision (c) of paragraph 3 of said decree as in paragraph (a) hereof set forth.

(e) All other parts of said decree which approve or direct the distribution to or subscription by stockholders of the Reading Company, preferred and common, share and share alike, of shares of stock or certificates of interest therein, issued or to be issued with respect to the right, title and interest of the Reading Company in and to the stock of the Philadelphia & Reading Coal & Iron Company, or which approve or direct action with respect to such distribution or subscription.

And your petitioners further respectfully represent that if the parts of the decree hereinbefore set forth stand in full force and effect until such appeal is heard, your petitioners will suffer great and irreparable injury as more fully appears from the record in this cause, and your petitioners pray that this Honorable Court order that said appeal and said bond shall supersede, stay and suspend the operation and effect of said parts of said decree.

Your petitioners further pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Dated, June 15, 1921.

ALFRED A. COOK,
Solicitor and Counsel for Continental
Insurance Company and Fidelity-
Phenix Fire Insurance Company of
New York.

Assignments of Error.

(Filed June 16, 1921.)

COME NOW Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York, two of the intervening defendants herein, and show by their counsel that in the record and proceedings in the above entitled cause manifest error has occurred to the prejudice of them and assign the following errors upon which they rely for a reversal of the Final Decree entered herein on June 6, 1921, in the particulars wherein error is assigned, to wit:

1. The Court erred in approving that part of Section 5 of the Modified Plan as supplemented by subdivision (c) of paragraph 3 of said decree which provides for the distribution to or subscription by stockholders of the Reading Company, preferred and common, share and share alike, upon the payment of \$2 per share for each share of stock of the Reading Company held by them, of shares of stock, or certificates of interest therein, issued or to be issued with respect to the right, title and interest of the Reading Company in and to the stock of the Philadelphia & Reading Coal & Iron Company in said decree and hereinafter called the Coal Company.

2. The Court erred in directing the consummation of that part of Section 5 of the Modified Plan as supplemented by subdivision (c) of paragraph 3 of said decree which provides for the distribution to or subscription by stockholders of the Reading Company, preferred and common, share and share alike, upon the payment of \$2. per share for each share of stock of the Reading Company held by them, of shares of stock, or certificates of interest therein, issued with respect to the right, title and interest of the Reading Company in and to the stock of the Coal Company.

3. The Court erred in holding that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company, as set forth in Section 5 of the Modified Plan as supplemented by said decree, does not confer upon the holders of the preferred stock of the Reading Company a benefit to the prejudice of the rights of the holders of the common stock of the Reading Company.

4. The Court erred in holding that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in Section 5 of the Modified Plan as supplemented by said decree is a sale to the stockholders of the Reading Company of its right, title and interest in and to the stock of the Coal Company.

5. The Court erred in holding that the sum of \$2. per share to be paid with respect to each share of stock of the Reading Company, to wit, the aggregate sum of \$5,600,000., is an adequate consideration for the disposition by the Reading Company of its right, title and interest in and to the stock of the Coal Company.

6. The Court erred in holding that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company was a distribution of capital of the Reading Company.

7. The Court erred in not holding that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in section 5 of the Modified Plan as supplemented by subdivision (c) of paragraph 3 of said decree, effectuates a distribution in part at least of or from the surplus or earnings of the Reading Company.

8. The Court erred in holding that it was warranted in treating the holders of common stock of the Reading Company who had not appeared and objected to the Plan as proposed, as acquiescing therein.

9. The Court erred in holding that it was justified in concluding from the positive attitude of a holder of 100,000 shares of common stock of the Reading Company that the holders of the remaining common stock who did not appear, had not only passively acquiesced in, but really actively approved of the Plan as proposed.

10. The Court erred in that it did not hold that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in Section 5 of the Modified Plan as supplemented by said decree, was a violation of the rights of the holders of the common stock.

11. The Court erred in that it did not hold that the holders of the common stock are solely entitled to distribution out of surplus of the Reading Company earned in years other than those in which the first preferred and second preferred stock were not paid full dividends.

12. The Court erred in that it did not hold that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in paragraph 5 of the Modified Plan as supplemented by said decree, is not a sale of the right, title and interest of the Reading Company in and to said stock.

13. The Court erred in that it did not hold that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in Section 5 of the Modified Plan as supplemented by said decree, was a distribution to stockholders in part at least of or from the surplus or earnings of the Reading Company.

14. The Court erred in that it did not hold that the holders of the preferred stock of the Reading Company are limited to dividends not exceeding 4% per annum and no more.

15. The Court erred in that it did not hold that the Modified Plan as supplemented by said decree, did not effectuate a dissolution or liquidation of the Reading Company.

WHEREFORE Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York pray that the Final Decree entered herein on June 6, 1921, be reversed in the particulars wherein error is assigned.

Dated, June 15, 1921.

ALFRED A. COOK,
Solicitor for Continental Insurance
Company and Fidelity-Phenix Fire
Insurance Company of New York,
Office and Post-Office Address,
Trinity Building,
New York City, N. Y.

Order Allowing Appeal.

(Filed June 16, 1921.)

BE IT REMEMBERED that in the above entitled and numbered cause, on this June 16, 1921, the petitioners, Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York, intervening defendants in said cause, appearing by their counsel, presented and caused to be filed their petition praying an appeal to the Supreme Court of the United States from the Final Decree entered herein on June 6, 1921, and at the same time presented and caused to be filed their

assignments of error, all as required by the Statutes and Rules of Court.

On consideration thereof the Court ORDERS AND DECREES that the appeal be allowed as prayed, and the Clerk is directed to transmit forthwith to the Supreme Court of the United States a properly authenticated transcript of the record, papers and proceedings.

IT IS FURTHER ORDERED AND DECREED that a bond for all damages and costs in the event that they shall fail to make their plea good shall be executed by said appellants and the amount of the same is hereby fixed at \$750,000. and upon entry of said bond with a surety satisfactory to the Court, so much of the aforesaid Final Decree entered herein on June 6, 1921, as is contained in the paragraphs thereof hereinafter set forth, be superseded, and all action and proceedings thereunder or with respect thereto stayed until the final determination of said appeal by the Supreme Court of the United States, to wit:

(a) Paragraph 1 of said decree insofar as it approves that part of Section 5 of the Modified Plan which provides with respect to the issue by the new corporation of 1,400,000 shares of stock without par value, that—

“Such no par value stock will be sold by the new corporation to the stockholders of the Reading Company, preferred and common, share and share alike, for \$5,600,000. at \$2. for each share of Reading stock”.

as supplemented by that part of subdivision (c) of paragraph 3 of said decree which provides that—

“Such Trustee or Trustees shall issue certificates of interest therein” (stock of the new corporation) “as contemplated by the Modified Plan and as hereinafter provided. The Reading Company shall offer such certificates of interest for subscription to its stockholders, preferred and common, share and share alike, and may issue to them assignable warrants evidencing their right to subscribe for said certificates of interest.”

(b) Paragraph 2 of said decree insofar as it directs that the Reading Company shall consummate those of the provisions of Section 5 of the Modified Plan as supplemented by subdivision (c) of paragraph 3 of said decree as hereinabove set forth.

(c) That part of subdivision (c) of paragraph 3 of said decree which provides that—

“The Trustee or Trustees shall issue certificates of interest therein” (stock of the new corporation) “as contemplated by the Modified Plan and as hereinafter provided. The Reading Company shall offer such certificates of interest for subscription to its stockholders, preferred and common, share and share alike, and may issue to them assignable warrants evidencing their right to subscribe for said certificates of interest.”

(d) That part of paragraph 5 of said decree which provides that—

“The Reading Company * * * shall proceed with due diligence to carry out the provisions of this decree and shall issue calls for meetings of * * * stockholders according to law for the purpose of submitting to the stockholders for their approval such action as may be appropriate to carry out the provisions of the Modified Plan as approved and supplemented by this decree or in connection therewith”,

insofar as the same applies to any meetings of, action or approval by, stockholders of the Reading Company or others with respect to that part of Section 5 of the Modified Plan as supplemented by subdivision (c) of paragraph 3 of said decree as in paragraph (a) hereof set forth.

(e) All other parts of said decree which approve or direct the distribution to or subscription by stockholders of the Reading Company, preferred and common, share and share alike, of shares of stock or certificates of interest therein, issued or to be issued with respect to the

right, title and interest of the Reading Company in and to the stock of the Philadelphia & Reading Coal & Iron Company, or which approve or direct action with respect to such distribution or subscription.

J. W. THOMPSON

D. J.

Supersedeas Bond and Bond on Appeal.

(Filed July 22, 1921.)

KNOW ALL MEN BY THESE PRESENTS, That we, CONTINENTAL INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New York, and FIDELITY-PHENIX FIRE INSURANCE COMPANY OF NEW YORK, likewise a corporation organized and existing under the laws of the State of New York, as principals, and UNITED STATES FIDELITY & GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, as surety, are held and firmly bound unto

THE UNITED STATES OF AMERICA,

READING COMPANY,

THE PHILADELPHIA & READING COAL AND IRON COMPANY,

PHILADELPHIA & READING RAILWAY COMPANY,

THE CENTRAL RAILROAD OF NEW JERSEY,

LEHIGH & WILKES-BARRE COAL COMPANY,

SEWARD PROSSER, MORTIMER N. BUCKNER and JOHN

H. MASON, as a Committee representing holders of Common stock of the Reading Company;

ADRIAN ISELIN, ROBERT B. DODSON and WILLIAM A.

LAW, as a Committee representing holders of Preferred stock of the Reading Company;

THE NEW YORK CENTRAL RAILROAD COMPANY;

THE BALTIMORE & OHIO RAILROAD COMPANY;

WILLIAM B. KURTZ and MADGE FULTON KURTZ;

PENN MUTUAL LIFE INSURANCE COMPANY;
 THE PENNSYLVANIA COMPANY FOR INSURANCE ON
 LIVES AND GRANTING ANNUITIES;
 FRANCES T. INGRAHAM, ROBERT S. INGRAHAM, MABEL
 S. INGRAHAM and MARCUS L. TAFT;
 THE GIRARD AVENUE TITLE AND TRUST COMPANY;
 JOSEPH E. WIDENER;
 CENTRAL UNION TRUST COMPANY OF NEW YORK as
 Trustee under the General Mortgage made by
 the Reading Company and the Philadelphia &
 Reading Coal and Iron Company, dated January
 5, 1897;

in the full and just sum of \$750,000, to be paid unto the
 aforesaid persons, committees and corporations, their suc-
 cessors, executors, administrators and assigns; to which
 payment well and truly to be made, we bind ourselves, our
 successors and assigns jointly and severally by these
 presents. Sealed with our seals and dated this July 19,
 1921.

WHEREAS lately at a session of the District Court of
 the United States within and for the Eastern District of
 Pennsylvania, in a suit pending in said Court in Equity,
 No. 1095, between The United States of America against
 Reading Company and others, either originally parties de-
 fendant in said suit or subsequently made parties defend-
 ant by orders of said Court, a final decree was rendered
 and entered in the office of the Clerk of said Court on
 June 6, 1921, and Continental Insurance Company and
 Fidelity-Phenix Fire Insurance Company of New York
 having obtained an order allowing an appeal from said
 final decree and filed a copy thereof in the office of the
 Clerk of said Court on June 16, 1921, and a citation
 directed to the parties to the aforesaid suit citing and
 admonishing them to be and appear at a session of the
 Supreme Court of the United States to be holden in the
 City of Washington, in the District of Columbia within
 thirty days,

NOW THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that if Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and Delivered in }
the Presence of: }
ERNEST STURM
CHAS. E. SWAN

CONTINENTAL INSURANCE COMPANY,
By J. E. LOPEZ,
President.

Attest:
ERNEST STURM,
Secretary.

FIDELITY-PHENIX FIRE INSURANCE COMPANY
OF NEW YORK,
By C. R. STREET,
President.

Attest:
ERNEST STURM,
Secretary.

UNITED STATES FIDELITY & GUARANTY COMPANY,
By WALTER ZEBLEY,
Vice-President.

Attest:
R. S. REIM,
Resident Secretary.

[SEAL]

Before THOMPSON, J.

Approved by
By the Court.

Attest:
LEO A. LILLY, Deputy Clerk.

STATE OF NEW YORK }
 County of New York } ss:

On July 19, 1921 before me came J. E. LOPEZ, to me known, who, being by me duly sworn, did depose and say that he resides in New York, N. Y., that he is the President of the Continental Insurance Company, the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

CHAS. E. SWAN,

[SEAL] Notary Public Kings County New York No
 890 Certificate filed in New York County N.
 Y. No. 65, Kings Co. Reg. No. 3050 New York
 Co. Reg. No. 3110

STATE OF NEW YORK }
 County of New York } ss:

On July 19, 1921, before me came C. R. STREET, to me known, who, being by me duly sworn, did depose and say that he resides in New York, N. Y., that he is the President of the Fidelity-Phenix Fire Insurance Company of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

CHAS. E. SWAN,

[SEAL] Notary Public Kings County New York No
 890 Certificate filed in New York N. Y. No
 65, Kings Co. Reg. No. 3050 New York Co.
 Reg. No. 3110

Citation.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES,

To

THE UNITED STATES OF AMERICA

READING COMPANY

THE PHILADELPHIA & READING COAL AND IRON COMPANY

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

LEHIGH & WILKES-BARRE COAL COMPANY

SEWARD PROSSER, MORTIMER N. BUCKNER and JOHN
H. MASON, as a Committee representing holders
of Common Stock of the Reading Company

ADRIAN ISELIN, ROBERT B. DODSON and WILLIAM A.
LAW as a Committee representing holders of
Preferred Stock of the Reading Company

THE NEW YORK CENTRAL RAILROAD COMPANY

THE BALTIMORE & OHIO RAILROAD COMPANY

WILLIAM B. KURTZ and MADGE FULTON KURTZ

PENN MUTUAL LIFE INSURANCE COMPANY

THE PENNSYLVANIA COMPANY FOR INSURANCE ON
LIVES AND GRANTING ANNUITIES

FRANCES T. INGRAHAM, ROBERT S. INGRAHAM, MABEL
S. INGRAHAM and MARCUS L. TAFT

THE GIRARD AVENUE TITLE AND TRUST COMPANY

JOSEPH E. WIDENER

CENTRAL UNION TRUST COMPANY OF NEW YORK as
Trustee under the General Mortgage made by
the Reading Company and the Philadelphia &
Reading Coal and Iron Company, dated January 5, 1897

PHILADELPHIA & READING RAILWAY COMPANY

GREETING:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United

States to be holden in the City of Washington, in the District of Columbia within thirty days, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States, Eastern District of Pennsylvania, wherein Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York are Appellants and you are Appellees, to show cause, if any there be, why the decree rendered against the said Appellants as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable J. WHITAKER THOMPSON,
Judge of the District Court of the United States this 21st
day of July, 1921.

J. W. THOMPSON
District Judge.

Service of the within citation is admitted on the date
set opposite our respective names:

August 4, 1921

GUY D. GOFF
United States Acting Attorney General

August 3, 1921

CHAS. HEEBNER
Attorney for Reading Company

August 3, 1921

CHAS. HEEBNER
Attorney for Philadelphia & Reading
Coal & Iron Co.

August 6th, 1921

ROBERT W. DE FOREST
CHARLES E. MILLER
Attorneys for The Central Railroad
Company of New Jersey

August 6th, 1921

ROBERT W. DE FOREST

CHARLES E. MILLER

Attorneys for Lehigh & Wilkes-Barre
Coal Co.

August 1st, 1921

WHITE & CASE

Attorneys for Seward Prosser, Mortimer N. Buckner and John H. Mason, as a Committee representing holders of Common Stock of Reading Company

August 1st, 1921

CADWALADER, WICKERSHAM & TAFT

Attorneys for Adrian Iselin, Robert B. Dodson and William A. Law, as a Committee representing holders of Preferred Stock of Reading Company

August 1st, 1921

ALEXANDER S. LYMAN

Attorney for The New York Central
Railroad Company

August 3, 1921

H. B. GILL

HUGH L. BOND

Attorneys for The Baltimore & Ohio
Railroad Company

August 3, 1921

T. R. WHITE

Attorney for William B. Kurtz and
Madge Falton Kurtz

August 2nd, 1921

GEORGE WHARTON PEPPER

by J. N. Conwell

Attorney for Penn Mutual Life Insurance Company

**Further Order enlarging time to docket Case and file Transcript,
filed October 19, 1921.**

On reading and filing the annexed affidavit verified October 14, 1921, praying for the enlargement of the time of Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York, appellants, to docket the case in the Supreme Court of the United States and file the record thereof with the Clerk of said Court,

ORDERED that the time of Continental Insurance Company and Fidelity-Phenix Fire Insurance Company of New York, appellants, to docket the case in the Supreme Court of the United States and to file the record thereof with the Clerk of said Court, be and it hereby is enlarged to and including November 15, 1921.

J. W. THOMPSON

United States District Judge.

Dated, October 14, 1921.

Petition of Seward Prosser, et al., for Appeal.

(Filed Aug. 3, 1921.)

Seward Prosser, Mortimer N. Buckner and John H. Mason, as a Committee formed at the request of certain holders of common stock of defendant Reading Company, having intervened in the above-entitled cause as parties defendant pursuant to leave given by an order of this Court entered on the 12th day of April, A. D., 1921, and feeling themselves aggrieved by the final decree of this Court entered in the above-entitled cause on the 6th day of June, 1921, now come, by J. DuPratt White, their counsel, and pray that an appeal may be allowed to them from the said final decree to Supreme Court of the United States and, in connection with this petition, present herewith their assignment of errors.

Petitioners further pray that citation be issued as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, be transmitted to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Petitioners further pray that the proper order be made relating to the security for costs to be required of them.

Dated, New York, N. Y., August 1, 1921.

J. DUPRATT WHITE,
Counsel for Intervening Defendants
Seward Prosser, Mortimer N. Buckner
and John H. Mason, as a Committee as
aforesaid.

Assignment of Errors.

(Filed Aug. 3, 1921.)

Now come Seward Prosser, Mortimer N. Buckner and John H. Mason, as a Committee formed at the request of certain holders of common stock of defendant Reading Company, intervening parties defendant in the above-entitled cause, by J. DuPratt White, their counsel, and, in connection with their petition for appeal, show that in the record and proceedings in the above-entitled cause, and in the final decree of this Court entered herein on the 6th day of June, 1921, manifest error has intervened to their prejudice and file the following assignment of errors upon which they will rely upon the prosecution of their appeal from said final decree, to wit:

1. The Court erred in approving that part of paragraph 5 of the Modified Plan as supplemented by the provisions of sub-paragraph (c) of paragraph 3 of said decree which provides that the Reading Company shall

offer for subscription to its stockholders, preferred and common, share and share alike, at \$2. for each share of Reading stock, assignable certificates of interest in the stock of the new corporation to which the Reading Company shall, subject to the lien of the General Mortgage, sell, assign and transfer all its right, title and interest in and to the stock of Philadelphia & Reading Coal & Iron Company (hereinafter called the "Coal Company").

2. The Court erred in ordering the consummation of the provisions of that part of paragraph 5 of the Modified Plan as supplemented by the provisions of sub-paragraph (c) of paragraph 3 of said decree which provides that the Reading Company shall offer for subscription to its stockholders, preferred and common, share and share alike, at \$2 for each share of Reading stock, assignable certificates of interest in the stock of the new corporation to which the Reading Company shall, subject to the lien of the General Mortgage, sell, assign and transfer all its right, title and interest in and to the stock of the Coal Company.

3. The Court erred in holding that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company provided for in paragraph 5 of the Modified Plan as supplemented by the provisions of said decree does not confer upon the holders of the preferred stock of the Reading Company a benefit to the prejudice of the legal rights of the holders of the common stock of the Reading Company.

4. The Court erred in holding that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in paragraph 5 of the Modified Plan as supplemented by the provisions of said decree is a sale to the stockholders of the Reading Company of such right, title and interest.

5. The Court erred in holding that the sum of \$5,600,000, or \$2.00 for each share of stock of the Reading Company, is an adequate consideration for the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company.

6. The Court erred in holding that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in paragraph 5 of the Modified Plan as supplemented by the provisions of said decree is a disposition of a part of the capital of the Reading Company.

7. The Court erred in not holding that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in paragraph 5 of the Modified Plan as supplemented by the provisions of said decree effectuates a distribution in part at least of or from the surplus net profits of the Reading Company.

8. The Court erred in holding that it was warranted in treating as acquiescing in the Modified Plan the holders of common stock of the Reading Company who had failed to object thereto.

9. The Court erred in holding that it was justified in concluding from the positive attitude of a holder of 100,000 shares of common stock of the Reading Company that the remainder of the holders of such stock who failed to object to the modified Plan were not only passively acquiescing in, but really actively approving, the same.

10. The Court erred in that it did not hold that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company pro-

vided in paragraph 5 of the Modified Plan as supplemented by the provisions of said decree is in violation of the legal rights of the holders of the common stock of the Reading Company.

11. The Court erred in that it did not hold that the holders of the common stock are solely entitled to distributions out of surplus net profits of the Reading Company of years other than those in which the full dividends shall not have been paid on the first and second preferred stock.

12. The Court erred in that it did not hold that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in paragraph 5 of the Modified Plan as supplemented by the provisions of said decree is not a sale of such right, title and interest.

13. The Court erred in that it did not hold that the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company as set forth in paragraph 5 of the Modified Plan as supplemented by the provisions of said decree is a distribution in part at least of or from the surplus net profits of the Reading Company.

14. The Court erred in that it did not hold that the holders of the preferred stock of the Reading Company are entitled to non-cumulative dividends not exceeding 4% per annum and no more.

15. The Court erred in that it did not hold that the Modified Plan as supplemented by the provisions of said decree does not effectuate a dissolution or liquidation of the Reading Company.

16. The Court erred in holding that the right of the stockholders of the Reading Company to participate in the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company is based on the corporate right of all shareholders in a Pennsylvania Corporation to share equally on a disposition of its assets.

17. The Court erred in not holding that the rights of the stockholders of the Reading Company to participate in the disposition of the right, title and interest of the Reading Company in and to the stock of the Coal Company are determined by the contractual rights existing between the Reading Company and its stockholders and among said stockholders, which contractual rights are expressed in the certificates of the first preferred, second preferred and common stocks of the Reading Company.

WHEREFORE Seward Prosser, Mortimer N. Buckner and John H. Mason, as a Committee as aforesaid, pray that the final decree of this Court entered herein on the 6th day of June, 1921, be reversed in the particulars wherein error is assigned.

Dated, New York, N. Y., August 1, 1921.

J. DUPRATT WHITE,
Counsel for Seward Prosser,
Mortimer N. Buckner and John
H. Mason, as a Committee as
aforesaid.

Order Allowing Appeal.**(Filed August 3, 1921.)**

On this 2nd day of August, 1921, Seward Prosser, Mortimer N. Buckner and John H. Mason, as a Committee formed at the request of certain holders of common stock of defendant Reading Company, intervening parties defendant in the above-entitled cause, appearing by their counsel, presented and caused to be filed their petition praying that an appeal may be allowed to them from the final decree entered herein on the 6th day of June, 1921, to the Supreme Court of the United States, and presented and caused to be filed with said petition their assignment of errors, pursuant to the statutes and rules of Court in such cases made and provided.

On consideration thereof it is ORDERED that an appeal be, and the same hereby is, allowed as prayed.

IT IS FURTHER ORDERED that citation be issued as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, be transmitted to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

IT IS FURTHER ORDERED that the security for costs on appeal be fixed at the sum of \$2,500.00/100.

Dated, Philadelphia, Pa., August 2nd, 1921.

J. W. THOMPSON
United States District Judge.

Receipt of Security for Costs.

Received of Seward Prosser, Mortimer N. Buckner and John H. Mason, as a Committee formed at the request of certain holders of common stock of Reading Company, intervening parties defendant herein, the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as

security for costs on appeal given pursuant to an order allowing appeal signed by Hon. J. W. Thompson, one of the Judges of this Court, on August 2, 1921.

Philadelphia, August 5, 1921.

GEORGE BRODBECK

Clerk of the aforesaid Court.

Citation.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES,

To

THE UNITED STATES OF AMERICA,
READING COMPANY,

THE PHILADELPHIA & READING COAL & IRON COM-
PANY,

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
LEHIGH & WILKES-BARRE COAL COMPANY,
CONTINENTAL INSURANCE COMPANY,
FIDELITY-PHENIX FIRE INSURANCE COMPANY OF NEW
YORK,

ADRIAN ISELIN, ROBERT B. DODSON, and WILLIAM
A. LAW, as a Committee representing holders of
Preferred Stock of the Reading Company,

THE NEW YORK CENTRAL RAILROAD COMPANY,
THE BALTIMORE & OHIO RAILROAD COMPANY,
WILLIAM B. KURTZ and MADGE FULTON KURTZ,
PENN MUTUAL LIFE INSURANCE COMPANY,
THE PENNSYLVANIA COMPANY FOR INSURANCE ON
LIVES AND GRANTING ANNUITIES,

FRANCES T. INGRAHAM, ROBERT S. INGRAHAM, MABEL
S. INGRAHAM, and MARCUS L. TAFT,

THE GIRARD AVENUE TITLE AND TRUST COMPANY,
JOSEPH E. WIDENER,

CENTRAL UNION TRUST COMPANY OF NEW YORK, as
Trustee under the General Mortgage made by the
Reading Company and the Philadelphia & Reading
Coal and Iron Company, dated January 5, 1897,
PHILADELPHIA & READING RAILWAY COMPANY,

GREETING :

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden in the City of Washington, in the District of Columbia, within thirty days, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Pennsylvania, wherein SEWARD PROSSER, MORTIMER N. BUCKNER and JOHN H. MASON, as a Committee representing holders of Common Stock of the Reading Company, are Appellants, and you are Appellees, to show cause, if any there be, why the decree rendered against the said Appellants as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable J. WHITAKER THOMPSON, Judge of the District Court of the United States, this fifth day of August, A. D., 1921.

J. W. THOMPSON

District Judge.

Service of a copy of the within citation is hereby admitted this 9th day of August, 1921.

CADWALADER, WICKERSHAM & TAFT

Counsel for Adrian Iselin *et al.*,
as a Committee representing
holders of Preferred Stock of the
Reading Company.

ALEX S. LYMAN

Counsel for The New York Central
Railroad Company.

GEO. S. INGRAHAM

Counsel for Frances T. Ingraham,
Robert S. Ingraham, Mabel S.
Ingraham and Marcus L. Taft.

LARKIN, RATHBONE & PERRY

Counsel for Central Union Trust
Company of New York, as Trust-
tee etc.

ALFRED A. COOK

Counsel for Continental Insurance
Company and Fidelity-Phenix
Fire Insurance Company of New
York.

ROBERT W. DE FOREST

Counsel for The Central Railroad
Company of New Jersey and
Lehigh & Wilkes Barre Coal
Company.

Service of a copy of the within citation is hereby admitted this 15th day of August, 1921.

WM. CLARKE MASON

Counsel for Reading Company.

CHAS. HEEBNER

Counsel for The Philadelphia &
Reading Coal and Iron Company
and Philadelphia & Reading Rail-
way Company.

H. B. GILL

per J. LECH GRIMES

Counsel for The Baltimore & Ohio
Railroad Company.

T. R. WHITE, per W. T.

Counsel for William B. Kurtz and
Madge Fulton Kurtz.

GEORGE WHARTON PEPPER

by J. S. CONWELL

Counsel for Penn Mutual Life In-
surance Company.

J. C. SAUL

Counsel for The Pennsylvania Com-
pany for Insurance on Lives and
Granting Annuities.

MICHAEL J. RYAN per H. G.

Counsel for The Girard Avenue
Title and Trust Company.

ELLIS AMES BALLARD

Counsel for Joseph E. Widener.

Service of a copy of the within citation is hereby admitted this 20th day of August, 1921.

ABRAM F. MYERS

For the Attorney General of the United States.

Order Enlarging Time to Docket Case and to File Transcript.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

SEWARD PROSSER, MORTIMER N. BUCK-
NER and JOHN H. MASON, as a com-
mittee representing holders of com-
mon stock of the Reading Company,
Appellants,

AGAINST

READING COMPANY *et al.*,
Appellees.

On reading and filing the annexed affidavit of Allen McCarty, verified the 26th day of August, 1921, and praying for the enlargement of the time of Seward Prosser, Mortimer N. Buckner and John H. Mason, as a committee representing holders of common stock of the Reading Company, appellants, to docket the case in the Supreme Court of the United States and to file the record thereof with the Clerk of said Court, it is

ORDERED that the time of said Seward Prosser, Mortimer N. Buckner and John H. Mason, as a committee representing holders of common stock of the Reading Company, to docket the case in the Supreme Court of the United States and to file the record thereof with the Clerk of said Court be and it is hereby enlarged to and including October 15, 1921.

Dated, August 26, 1921.

J. W. THOMPSON,
U. S. D. J.

Further Order Enlarging Time to Docket Case and File Transcript.

(Filed Oct. 19, 1921.)

On reading and filing the annexed affidavit of Allen McCarty, verified the 14th day of October, 1921, and praying for the enlargement of the time of Seward Prosser, Mortimer N. Buckner and John H. Mason, as a committee representing holders of common stock of the Reading Company, appellants, to docket the case in the Supreme Court of the United States and to file the record thereof with the Clerk of said Court, it is

ORDERED that the time of said Seward Prosser, Mortimer N. Buckner and John H. Mason, as a committee representing holders of common stock of the Reading Company, to docket the case in the Supreme Court of the United States and to file the record thereof with the Clerk of said Court be and it is hereby enlarged to and including November 15, 1921.

Dated, October 14, 1921.

J. W. THOMPSON
United States District Judge.

Stipulation of Counsel *re* Record.

IT IS HEREBY STIPULATED by the counsel for the respective parties in this suit, subject to the approval of the Court, that:

(a) The foregoing documents, statements and matters shall be the record, assignments of errors, and all the proceedings in the within entitled cause and shall constitute the matter to be included in the transcript of record on the appeal from the final decree made and entered June 6, 1921; and

(b) The copy marked "Transcript of Record" upon the cover and endorsed with the signatures of the Counsel for Reading Company, Adrian Iselin, *et al.*, and Continental Insurance Co., *et al.*, on the last page thereof, is a true copy of such documents, statements and matters and may be taken, used and certified by the Clerk of said Court in making up and certifying the transcript of record as a true copy of the record, assignments of errors and all the proceedings in the within entitled cause without personally making a check and comparison of the same with the documents, statements and matters on file in said Court.

Dated, November 2, 1921.

ABRAM F. MYERS, for the
United States Attorney General.

WM. CLARKE MASON,
R. C. LEFFINGWELL,
CHAS. HEEBNER,
Attorneys for Reading Company.

CHAS. HEEBNER,
Attorney for Philadelphia &
Reading Coal & Iron Co.

ROBERT W. DE FOREST,
CHARLES E. MILLER,
Attorneys for The Central Rail-
road Company of New Jersey.

ROBERT W. DE FOREST,
CHARLES E. MILLER,
Attorneys for Lehigh & Wilkes-
Barre Coal Co.

J. DU PRATT WHITE,
Attorney for Seward Prosser,
Mortimer N. Buckner and
John H. Mason, as a Commit-
tee representing holders of
Common Stock of Reading
Company.

CADWALADER, WICKERSHAM & TAFT,
Attorneys for Adrian Iselin, Rob-
ert B. Dodson and William
A. Law, as a Committee rep-
resenting holders of Preferred
Stock of Reading Company.

ALEX. S. LYMAN,
Attorney for The New York
Central Company.

H. B. GILL,
Attorney for The Baltimore &
Ohio Railroad Company.

T. R. WHITE,
Attorney for William B. Kurtz
and Madge Fulton Kurtz.

GEORGE WHARTON PEPPER,
Attorney for Penn Mutual Life
Insurance Society.

SAUL, EWING, REMICK & SAUL,
by M. B. SAUL,
Attorneys for The Pennsylvania
Company for Insurances on
Lives and Granting Annuities.

GEO. S. INGRAHAM,
Attorney for Frances T. In-
graham, Robert S. Ingraham,
Mabel S. Ingraham and Mar-
cus L. Taft.

MICHAEL J. RYAN,
Attorney for The Girard Avenue
Title & Trust Co.

ELLIS AMES BALLARD,
Attorney for Joseph E. Widener.

JNO. M. PERRY,
Attorney for Central Union
Trust Company.

CHAS. HEEBNER,
Attorney for Philadelphia &
Reading Railway Company.

ALFRED A. COOK,
Attorney for Continental Insur-
ance Company and Fidelity-
Phenix Fire Insurance Com-
pany of New York.

Approved:

J. W. THOMPSON,
D. J.

Copy of Clerk's Certificate.

The foregoing copy of the documents, statements and matters constituting the record, consisting of 346 consecutively numbered pages, was duly lodged in the office of the Clerk of the District Court of the United States for the Eastern District of Pennsylvania, this November 4, 1921.

GEORGE BRODBECK,
Clerk of the District Court of
the United States for the
Eastern District of Penn-
sylvania.

I, GEORGE BRODBECK, Clerk of the United States District Court, do hereby certify and return to the Honorable, the Supreme Court of the United States, that the foregoing containing 346 pages numbered consecutively from 1 to 346, both inclusive, is a true and complete transcript of the record, assignments of errors and all proceedings in the within entitled cause in accordance with a stipulation of the counsel for all the parties in this suit, a copy whereof is set forth at pages 343-346, inclusive, of said transcript, as appears from the original records on file in this Court.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court at Philadelphia in the Eastern District of Pennsylvania this November 7, 1921.

GEORGE BRODBECK,
Clerk.

[SEAL]